

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF TEXAS
3 HOUSTON DIVISION

4 MRS. SAMUEL E. ALLGOOD, X
5 INDIVIDUALLY AND AS X
6 INDEPENDENT EXECUTRIX OF X
7 THE ESTATE OF SAMUEL E. X
8 ALLGOOD, MARCUS ALLGOOD, X
9 AND MALCOLM ALGOOD X
10 VS. X C.A. NO. H-91-0158
11 R.J. REYNOLDS TOBACCO X
12 COMPANY, THE AMERICAN X
13 TOBACCO COMPANY, THE X
14 TOBACCO INSTITUTE, INC., X
15 AND THE COUNCIL FOR TOBACCO X
16 RESEARCH-U.S.A., INC. X

17 - - - - -

18 DEPOSITION OF P. CAREN PHELAN, Ph.D.

19 MARCH 22, 1994

20 - - - - -

21 DEPOSITION AND ANSWERS of P. CAREN PHELAN,
22 called as witness by the plaintiffs, taken on the 22nd
23 day of March 1994 between the hours of 9 a.m. and 2:45
24 p.m. in the law offices of Jones, Day, Reavis & Pogue,
25 301 Congress Avenue, Suite 1200, Austin, Texas, before
 Neal W. Husak, certified shorthand reporter, state of
 Texas, pursuant to the following stipulation and waiver
 of counsel.

A P P E A R A N C E S

ALDEN D. HOLFORD, 7515 Kensico, Houston, Texas 77036.

FOR THE PLAINTIFFS

PETER J. BIERSTEKER (Jones, Day, Reavis & Pogue),
Metropolitan Square, 1450 G Street N.W.,
Washington, D.C. 20005-2088.

JOSEPH M. DAVID, JR. (Jones, Day, Reavis & Pogue),
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FOR THE DEFENDANT
R.J. REYNOLDS TOBACCO COMPANY

SCOTT ALLEN (Cruse, Scott, Henderson, and Allen),
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FOR THE DEFENDANT
THE AMERICAN TOBACCO COMPANY

* * * * *

STIPULATIONS

This stipulation is being made by the
parties hereto, through their respective attorneys of
record, and is to be incorporated within the text herein
as follows:

The deposition of P. CAREN PHELAN, Ph.D. is
being taken for use in Civil Action No. H-91-0158
pending in the United States District Court for the
Southern District of Texas pursuant to notice and
subpoena.

ANY STIPULATIONS OTHER THAN THOSE SET FORTH HEREIN SHALL
BE MADE ON THE RECORD AND INCLUDED IN THE DEPOSITION
TRANSCRIPT.

1. STIPULATION REGARDING OBJECTIONS:

All objections will be made pursuant to the
Federal Rules of Civil Procedure.

2. STIPULATION REGARDING SIGNATURE OF THE WITNESS:

The original will be submitted to the
witness, and the witness will return the signed
deposition to the attorney who asked the first question
within 20 days.

* * * * *

I N D E X

PHELAN DEPOSITION EXHIBITS

EXHIBIT NUMBER	DESCRIPTION	PAGE
1	Curriculum Vitae -----	57
2	Notice of Intention to Take Oral Deposition of P. Caren Phelan -----	106
2A	(Reserved for Later Production) Annotated Deposition Pages -----	139
3	R.J. Reynolds Tobacco Company's Responses to First Set of Interrogatories -----	172
4	Page 5, Identification of Dr. Phelan's Psychological Position Taken in this Case --	173

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1 P. C A R E N P H E L A N, Ph.D., called
2 as a witness by the plaintiffs, having been duly
3 sworn, testified as follows:

4 MR. HOLFORD: I have five after 9. I
5 just was handed defendant R. J. Reynolds Tobacco
6 Company's objections to plaintiff's request for
7 documents from P. Caren Phelan, Ph.D. I'm not going
8 to read it because it's untimely.

9 MR. DAVID: Well, it's not untimely
10 under the rules. Since you provided a subpoena -
11 purported subpoena duces tecum by fax late in the
12 afternoon on the 16th, not counting weekend days, it
13 is not at all untimely.

14 MR. HOLFORD: Well, I can't discuss your
15 dates, Mr. David. They may be right. I don't know,
16 but there we stand.

17 MR. DAVID: It doesn't matter. Let's
18 get on with the deposition.

19 MR. HOLFORD: Now, we're doing this
20 under the Federal Rules of Civil Procedure except
21 that I understand -- do you go by doctor?

22 THE WITNESS: You can call me whatever
23 you want. I'll answer to a number of things.

24 MR. DAVID: Doctor would be nice.

25 MR. HOLFORD: But you are a doctor of

1 3philosophy. Isn't that right?

2 THE WITNESS: I am a Ph.D. That is
3 correct. I am a licensed psychologist.

4 MR. HOLFORD: You want to read and sign
5 this deposition?

6 THE WITNESS: Please.

7 EXAMINATION

8 QUESTIONS BY MR. HOLFORD:

9 Q Now, would you state your full name.

10 A It's P, period, Caren, C-a-r-e-n, Phelan,
11 P-h-e-l-a-n.

12 Q What does the P. stand for?

13 A Stands for Pearl.

14 Q P-e-a-r-l?

15 A Yes, sir, good old southern name.

16 Q What are you charging for your time at this
17 deposition?

18 A My usual fees. For depositions, I charge the same
19 as I do in court. That's a hundred seventy-five an
20 hour.

21 Q Do you have a different charge for reviewing
22 materials?

23 A Yes, sir, I do.

24 Q What is that?

25 A Reviewing materials I charge at the usual rate of

1 95.

2 Q What is your social security number?

3 A Oh, I don't know if I want to give you my social
4 security number.

5 Q Well, I have a check to make out to you at the end
6 of the deposition.

7 A Okay. I always hesitate to give out social security
8 numbers.

9 Q If you'd rather not give it on the record, we can do
10 it that way.

11 A Thank you. I would appreciate that.

12 MR. HOLFORD: Off the record.

13 (Discussion off the record.

14 MR. HOLFORD: Okay, back on.

15 Q (By Mr. Holford) What is your residence address?

16 A 9105 Zyle, Z as in zebra, y-l-e, Road, Austin,
17 Texas.

18 Q What is the zip?

19 A 78737.

20 Q What is your telephone there?

21 A That's area code (512) 288-0398.

22 Q What is your business address?

23 A That's 4807 Spicewood Springs Road, Building 1,
24 Suite 1140, Austin, 78759.

25 Q Your phone there?

1 A Is (512) 346-6038.

2 Q Is that -- did you move from 7200 North Mopac?

3 A Yes, sir, when our lease was up in August, my
4 partner and I moved.

5 MR. DAVID: Incidentally -- I'm sorry.
6 Have you introduced yourself to Dr. Phelan?

7 MR. HOLFORD: Not yet.

8 MR. DAVID: Dr. Phelan, this is Mr.
9 Holford. He represents the plaintiff in this case,
10 just so that you know who's asking you questions.

11 THE WITNESS: Thank you.

12 MR. HOLFORD: Mr. David ---

13 MR. DAVID: I think it's always nice,
14 you know, and gentlemanly to introduce yourself to a
15 person before you really begin to get into a
16 deposition.

17 MR. HOLFORD: Well, I would like you to
18 let me conduct my own deposition, Mr. David.

19 Q (By Mr. Holford) Now, you have how many partners?

20 A There's only one other person that is in the office
21 with me plus the secretaries.

22 Q You-all are a partnership?

23 A It's not a partnership, no, sir. We're independent
24 practitioners who share common space and have been
25 together for many years.

1 Q Now, I am Doug Holford from Houston, and I represent
2 the plaintiffs in this case, the family of Samuel
3 Edward Allgood.

4 A Yes, sir.

5 Q Being his wife, Bonnie Allgood, and their sons,
6 Marcus and Malcolm Allgood. Have you seen those
7 names before, I gather?

8 A Yes, sir. Glad to meet you.

9 Q Nice to meet you.

10 Now, we have never met nor talked before.
11 Is that right?

12 A That's true, sir.

13 Q Where were you raised?

14 A Well, I've been in and out of Texas since I was
15 three and spent a lot of time in Texas and spent a
16 lot of time in Florida, those two areas. I left
17 when I was 17 because I married, and we lived all
18 over because I was an Air Force wife.

19 Q Were you raised in an Air Force family?

20 A No, sir.

21 Q Military family?

22 A No, sir.

23 Q What was the cause of your moving as much?

24 A My father liked nice climates, and so he always
25 tried to spend the winters where it was nice

1 climate.

2 Q What kind of work did he do?

3 A He had a seat on Wall Street. He was a stockbroker.

4 Q So he could work that from about anywhere, in other
5 words?

6 A Just about anywhere, even back in those dim, dark
7 days.

8 Q What is your date of birth?

9 A November 9, 1927.

10 Q So the dim, dark days you're referring to is the
11 Great Depression?

12 A Back in even the Great Depression, yes, sir.

13 Q Would you describe your work now?

14 A As I indicated, I'm a licensed psychologist,
15 licensed by the state of Texas. I'm also certified
16 as - in the National Council for Health Service
17 Providers in Psychology, and I work at the address I
18 gave you previously and see mostly families. I
19 probably see more families than I do individual
20 people in therapy, and I see them in a variety of
21 contexts.

22 I may see the whole family, mother, father,
23 children. I may see just some of the children with
24 the parents sometimes. I may see just a couple in
25 marital therapy, but I do more work with families

1 than anything else.

2 Q And what would be the substances of your treatment
3 of these - in these family situations?

4 A I'm not sure I understand.

5 Q All right.

6 A It's therapy.

7 Q Yes, but for what type of problems?

8 A Oh, a variety of problems, everything that extends
9 from children that they're having difficulty with to
10 divorce problems, to substance abuse problems, to
11 people who have problems in terms of trying to see
12 if they can put their marriage back together or are
13 contemplating divorce. It's a variety of
14 difficulties that bring families to me.

15 Q And individuals - are they any different in the
16 problems you treat?

17 A Individuals are basically the same kind of problems.
18 I just don't treat as many individuals as I do
19 families.

20 Q In your experience, Dr. Phelan, do teen-age girls
21 present more problems in families than teen-age
22 boys?

23 MR. DAVID: Object to the form of the
24 question.

25 Q (By Mr. Holford) If you have an opinion on that.

1 A I think they all present problems in teen-age years,
2 sir.

3 Q What is the name of the person you share office
4 expense with?

5 A That's a Dr. Deutsch.

6 Q D-e-u-t ---

7 A S-c-h, uh-huh.

8 Q S-c-h. What is the first name?

9 A Her name is Connie.

10 Q Does she do the same thing you do?

11 A No, we have very different practices. That's
12 probably why it's done so well.

13 Q What does she treat that's different than yours?

14 A She mostly sees individuals, some couples.

15 Q What type of problems?

16 A I don't really know the extent of all the people
17 that she sees. I know she deals with a lot of
18 women's issues.

19 Q Abuse of wives for instance?

20 MR. DAVID: Is there some relevance to
21 this? I object.

22 A I don't know. I really don't know because we don't
23 discuss our cases.

24 Q (By Mr. Holford) Now, do you understand that the
25 answers you're giving here under oath today have the

1 same effect as though you were at the trial of this
2 case on the stand sworn to tell the truth and
3 answering there?

4 A Yes, sir.

5 Q If I ask you a question -- I think you've done this
6 once already?

7 A Yes, sir.

8 Q But if I ask you any question and you for any reason
9 don't understand it, will you stop and not answer it
10 and tell me that you don't understand it?

11 A Yes, sir, be glad to.

12 Q Now, when we get this - the transcript of this
13 deposition after you've read and signed it, if we
14 look in that transcript and find some question and
15 it appears that the only thing following that
16 question is your answer, may we fairly -- have I
17 lost you already?

18 A Yes, sir.

19 Q We've got the transcript of this deposition later.

20 A Yes, sir.

21 Q And I open it, and there on a page is a question
22 from me to you.

23 A Yes, sir.

24 Q Following it is only your answer.

25 A Yes, sir.

- 1 Q All right, can we fairly understand from that that
2 in answering you've understood the question?
- 3 A Yes, sir, I think that would be a fair assumption.
- 4 Q Okay, have you testified under oath before?
- 5 A Yes, sir, I have.
- 6 Q Have you testified before as a fact witness?
- 7 A I've testified both as a fact witness as well as an
8 expert.
- 9 Q You've testified as a fact witness as a treating
10 psychologist. Is that correct?
- 11 A That is correct.
- 12 Q Have you testified as a fact witness in any other
13 type case?
- 14 A I can't think of any. I've usually been treating
15 someone and had to come in and testify.
- 16 Q Have you testified as an expert witness at trial
17 before?
- 18 A Yes, sir.
- 19 Q How many times?
- 20 A Many times. I don't count them but certainly over
21 several hundred.
- 22 Q And those have included, again, the cases we
23 mentioned where you were the treating psychologist.
24 Is that right?
- 25 A Yes, sir.

1 Q Does that account for most of them?

2 A No, sir, most of them are expert witness
3 testimonies.

4 Q That is where you've been hired by a party to a
5 litigation to testify as an expert on their behalf,
6 and it does not have to do with your patients. Is
7 that right?

8 A That is correct.

9 Q How many times have you done that?

10 A Many times. As I say, it's certainly well over a
11 hundred times that I've - it may be even as much as
12 two or three hundred.

13 Q Is there a typical type of testimony that you give
14 in these instances of over a hundred cases?

15 MR. RILEY: Object to the form of the
16 question.

17 A It's psychological data of course because I'm a
18 psychologist. So that's - the form of the questions
19 have to do with psychological issues.

20 Q (By Mr. Holford) And is there a typical subject
21 matter that you deal with in those cases?

22 A Probably more in terms of families, custody,
23 modifications of custody, child abuse - those kind
24 of cases.

25 Q Would those kind of cases account for the times

1 you've testified as an expert at trial other than
2 when you were testifying as the treating
3 psychologist?

4 MR. DAVID: Object to the form of the
5 question. It's unintelligible and incomprehensible.

6 Q Do you understand my question?

7 A If I ---

8 MR. DAVID: I don't.

9 MR. HOLFORD: You are not testifying,
10 Mr. David.

11 MR. DAVID: Well, if I don't understand
12 it, the witness doesn't either.

13 MR. HOLFORD: I wouldn't make that
14 assumption about Dr. Phelan. I don't know why you
15 do.

16 THE WITNESS: I've forgotten it now.
17 Can you go back and say it again? I'm sorry.

18 MR. HOLFORD: Yes, I will. Let's have
19 the reporter repeat it.

20 THE WITNESS: Okay.

21 (The last question was read by
22 the reporter.

23 MR. DAVID: Same objection.

24 MR. HOLFORD: Oh, did I leave out a
25 word? Let me restate it.

1 THE WITNESS: I was going to say
2 something is missing.

3 MR. HOLFORD: Something is missing
4 there, yeah.

5 Q (By Mr. Holford) Dr. Phelan, you mentioned where
6 you were testifying as an expert in child custody
7 cases, modifications of custody or support of
8 children orders, like that. Is that right?

9 A Yes, and child abuse.

10 Q Child abuse?

11 A And personal injury and all of those, yes.

12 Q Has the personal injury you've testified about been
13 from a trauma?

14 A It's been from different things.

15 Q Or actually could be mental effect?

16 A Yes, it's been a number of things.

17 Q All right. Now, do those type cases that you've
18 just - we've just discussed and the type cases where
19 you're in court testifying as the treating
20 psychologist - do those all account for your
21 instances of testifying as an expert at trial?

22 MR. DAVID: Object to the form of the
23 question.

24 A I think you're asking me are those the kind of cases
25 that I've ended up testifying about.

1 Q All of the kind of cases that you've ended up
2 testifying about.

3 A I don't know if that's all or not because I'd have
4 to go through -- in fact I know it isn't. I've
5 testified in competency. I've testified in
6 competency to stand trial. I've testified in terms
7 of competency at the time of the crime. I've also
8 testified in the state class action lawsuit that
9 involved the state mental health system, and I've
10 also testified in Waxman's court in Washington at
11 one point about the - about help for the chronically
12 mentally disabled. So I don't know legally where
13 all those fall, but that's just to give you an idea.

14 Q Well, have you now mentioned all the types of cases
15 that you've been in court testifying about as an
16 expert?

17 A I hope so.

18 MR. DAVID: Let me just interpose an
19 objection. I object to the form of the question.
20 It is vague and ambiguous and incomprehensible. Go
21 ahead.

22 A I hope so. I don't know. You know, I'd have to go
23 back and think about each one individually.

24 Q (By Mr. Holford) Well, as best you can recall now
25 having ---

1 A At this point, those are the ones that I recall.
2 Whether there are others, as I said, I'd have to go
3 back and look at my cases.

4 MR. DAVID: Please have the record
5 interpose an objection prior to that answer.

6 MR. HOLFORD: Well, it will be shown
7 now, and I'm not saying whether that doesn't make a
8 valid objection or not, Mr. David.

9 MR. DAVID: Well, the record is the
10 record. Whatever it shows it shows.

11 MR. HOLFORD: That's right.

12 MR. DAVID: Give me an opportunity
13 before you answer the questions to make an
14 objection, if you would, Dr. Phelan.

15 THE WITNESS: I will try to.

16 MR. DAVID: Thank you. Since Mr.
17 Holford wants to be picky this morning.

18 MR. HOLFORD: I object to the personal
19 comments. That's unprofessional and uncivil.

20 Q (By Mr. Holford) Now, Dr. Phelan, have you ever
21 testified as an expert at trial where you testified
22 as to substance abuse?

23 A Yes, sir.

24 Q Now, would you tell me how many times that's been?

25 A I can't tell you the precise number because there's

1 been substance abuse in many of the cases of
2 custody, many of the cases of competency to stand
3 trial. So I can't give you specific numbers. I've
4 testified in many cases where substance abuse is
5 involved.

6 Q All right, how many cases have you testified in
7 where you gave opinions regarding substance abuse?

8 A I don't know. I don't keep track of cases by legal
9 procedures. I keep track of cases by patients. So
10 I don't have any idea.

11 Q Well, can you give me all the various types of
12 substances that you've stated opinions about before
13 in trial?

14 A Many.

15 MR. DAVID: I'm sorry. You mean about
16 which she has a present recollection?

17 MR. HOLFORD: Well, I think ---

18 Q (By Mr. Holford) Are you going to tell me anything
19 you don't recall, Dr. Phelan?

20 A No, sir.

21 Q Go ahead, if you can answer the question.

22 MR. DAVID: I just don't want to limit
23 it to what she's telling you. I'm just telling you
24 that she's going to tell you about what she
25 currently recalls.

1 A Yeah, and there may be things I don't recall. That
2 is true.

3 Q But you are giving your best effort. Right?

4 A I'm giving you the best effort that I can.
5 Certainly about drugs of all kinds.

6 Q Well, if you will, please spell out.

7 A Well, all kinds of drugs from methamphetamines to
8 pot, to alcohol, to heroin, to crack, to cocaine.
9 Those have all been involved plus others, you know,
10 at this point - prescription medications, all kinds
11 of drugs. I just can't really tell you by name
12 every one of them, but I think if you named them, I
13 would probably say, yes, I remember a case where
14 those were involved.

15 Q All right. Now, have you testified regarding any
16 substances being abused other than these drugs that
17 you've mentioned?

18 A Yes, glue sniffing, gasoline sniffing one time --
19 did I say alcohol -- just a whole bunch of those
20 substances. I just don't know whether that is an
21 exhaustive list, but it's certainly the ones I can
22 think of at this moment.

23 MR. DAVID: Would you open this just in
24 case -- well, that's just a little levity.

25 Q (By Mr. Holford) Dr. Phelan, do you consider

1 alcohol a drug?

2 A Oh, yes.

3 Q Have your testimonies regarding substance abuse ever
4 included nicotine?

5 A No.

6 MR. DAVID: I'm going to object to the
7 form of the question. It assumes nicotine is a
8 drug.

9 Q (By Mr. Holford) I think you answered already.
10 Would you go ahead?

11 A I have not testified about nicotine. I don't
12 consider it a drug.

13 Q Okay, that was going to be my next question, right.
14 You consider alcohol a drug but not nicotine?

15 A That is correct.

16 Q Do you know what the DSM III-R is?

17 A Yes, sir.

18 Q Have you ever compared the effects of nicotine to
19 the requirements in the DSM III-R?

20 A No, sir. I know what they say. I haven't used it
21 for comparison purposes.

22 MR. RILEY: I just want to object to the
23 form of that question.

24 Q (By Mr. Holford) What do you use the DSM III-R for?

25 A For diagnostic purposes to put on insurance forms

1 and to put on reports.

2 Q That's a Roman Numeral III?

3 A In fact it's DSM III-R.

4 Q Yes, that's right. Thank you.

5 A Soon to be DSM IV.

6 Q Now, so you use the DSM III-R only to diagnose
7 particular patients that you have. Right?

8 A I use the DSM III or any of the other variations of
9 it always to diagnose a patient that I'm either
10 seeing for testing only or that is an ongoing
11 patient.

12 Q So do I fairly gather that you've never had a
13 patient or a person you were seeing only for testing
14 whose problem was nicotine dependence?

15 MR. DAVID: Object to the form of the
16 question. It assumes facts not in evidence, that
17 is, that there is such a thing as nicotine
18 dependence.

19 Q (By Mr. Holford) All right, let me back up. Is
20 there such a thing as nicotine dependence?

21 A I think nicotine is a habit. I don't see it as
22 something that you're dependent on.

23 Q Okay, and do you think that there is such a thing as
24 nicotine addiction?

25 MR. DAVID: Just a second. I object to

1 the form of the question. The doctor is not in here
2 to tell you what she thinks. The doctor is in here
3 to give opinions. If you want opinions, ask for
4 opinions.

5 MR. HOLFORD: Okay, sure.

6 Q Dr. Phelan, in your opinion, is there such a thing
7 as nicotine addiction?

8 A No, sir.

9 Q So am I correct that you've never treated or tested
10 anyone or testified about anyone because they used
11 nicotine?

12 MR. RILEY: Object to the form of the
13 question.

14 MR. DAVID: I join in that objection.

15 Q Is that right?

16 A Have I testified about people who smoke? Of course.

17 Q No, sir - I mean, no, ma'am. Sorry. All right,
18 let's take it one at a time. I think we may have
19 covered this, but have you ever given professional
20 opinions in court regarding nicotine?

21 MR. RILEY: Asked and answered.

22 A There have been plenty of people that I've worked
23 with that I've testified on through the years that
24 smoke.

25 Q Did you testify about the nicotine in their

1 cigarette smoke?

2 A Oh, no, sir. You mean the amount of nicotine?

3 Q Well, the - any effect it may have on the smoker.

4 A No, sir. I think, if I understand your question
5 correctly, no, sir.

6 Q Well, I'll have to ask it again then. Have you ever
7 testified about the effect or noneffect of nicotine
8 in cigarette smoke?

9 A I don't ---

10 MR. RILEY: I object to the form of the
11 question. Go ahead, Doctor.

12 A Thank you. If I understand what you're saying, have
13 I testified about the nicotine in cigarettes, no,
14 sir. If you're asking have I testified about people
15 who smoke, then the answer is yes, sir.

16 Q Your testimony, though, about people who smoke had
17 nothing to do with the fact that they smoked.
18 Right?

19 A That's correct.

20 Q So I think, when you restated my question, it did
21 show you didn't understand it. So let me ask it
22 again.

23 You've never given professional opinion in
24 court about the effect or noneffect of nicotine in a
25 smoker?

1 MR. RILEY: Object to the form.

2 Q (By Mr. Holford) Is that right?

3 A Yeah. I think you're asking me a medical question
4 that I don't believe I can answer. You're saying
5 the amount of nicotine in a person, and, see, I
6 don't think I can answer that. I think that would
7 take some kind of medical exam to determine.

8 Q Now, Dr. Phelan, I think the record will be clear
9 when you read this that I did not mention the amount
10 of nicotine in a person. I asked you about the
11 effect or noneffect on the person being a smoker.
12 Have you ever given a professional opinion about
13 that?

14 A No, sir.

15 MR. RILEY: Object to the form.

16 A I think I understand finally.

17 Q All right, thank you.

18 MR. DAVID: I'm not sure what the
19 stipulations are if there are stipulations, but if
20 there are not such stipulations, can we stipulate
21 that the objection of one party applies to all
22 parties?

23 MR. HOLFORD: Oh, yes, yes, I always
24 agree with that.

25 MR. DAVID: Thank you.

1 MR. RILEY: That's an agreement we've
2 had throughout the case.

3 MR. HOLFORD: That's right, yes.

4 MR. DAVID: I just wasn't sure.

5 Q (By Mr. Holford) That's so, Dr. Phelan, he doesn't
6 say, "I object," and then he has to say "I object,"
7 and he has to say, "I object."

8 A Oh, okay, thank you.

9 Q It only takes me hearing it once. Right?

10 Now, similarly is it true that you've never
11 treated or tested a patient concerning the effect or
12 noneffect of nicotine on that person?

13 MR. RILEY: Object to the form.

14 MR. DAVID: Object to the form, compound
15 question.

16 MR. HOLFORD: All right, I'll break it
17 up.

18 Q (By Mr. Holford) Have you ever had a patient that
19 you treated because of the effect or noneffect of
20 nicotine on that person?

21 A No, sir.

22 Q Have you ever tested a person because of the effect
23 or noneffect of nicotine on that person?

24 A That would be a medical test, and I can't do that
25 because I'm not a physician.

1 Q So the answer is?

2 A Would be no.

3 Q Now, you must have given a whole lot of depositions
4 then, too. Is that right?

5 A Yes, sir.

6 Q At least as many as you've testified in trials?

7 A Not always, sir, but certainly many of them.

8 Q Have you ever given opinions in a deposition
9 concerning a smoker and concerning the effect or
10 noneffect of nicotine in that smoker?

11 MR. RILEY: Object to the form of the
12 question.

13 A Can you start it over again, please, sir?

14 Q Sure. You are in a deposition now rather than at
15 trial.

16 A Yes, sir.

17 Q It's the same question I asked before. Have you
18 ever in a deposition involving a smoker stated an
19 opinion about the effect or noneffect of nicotine on
20 that smoker?

21 MR. RILEY: Same objection.

22 A I think I understand it. No, sir, I haven't
23 testified in a deposition to somebody smoking.

24 Q Or the effect of nicotine on the smoker?

25 A Or the effect of nicotine.

1 Q That's correct?

2 A That is correct.

3 Q You know the difference between a consulting expert
4 and a testifying expert?

5 A Yes, sir.

6 Q Okay, how many times have you been a consulting
7 expert when it did not turn into being a testifying
8 expert?

9 A Quite a few times. Again, I just don't keep track
10 of cases. I keep track of patients.

11 Q As a consulting expert, did you ever give opinion
12 regarding a smoker and concerning the effect or
13 noneffect of nicotine in that smoker?

14 MR. RILEY: Object to the form.

15 A Say that again.

16 Q Yes, ma'am. As a consulting expert, have you ever
17 given opinion regarding a smoker and the effect or
18 noneffect of nicotine in that smoker?

19 MR. RILEY: Same objection.

20 A I don't understand the part about the nicotine in
21 the person. That's the part that's confusing me. I
22 don't understand quite that part of it. Can we ---

23 Q All right, sure, let's go into that a little bit.
24 Now, is there nicotine in tobacco?

25 A Yes, sir.

1 Q Is there nicotine in cigarette smoke when a person
2 smokes it?

3 A As I understand, yes.

4 Q Does that nicotine enter the respiratory system and
5 the lungs of that smoker?

6 A I'm assuming it does. Again, I don't have medical
7 tests that tell me that, but I'll certainly assume
8 it does.

9 Q To your understanding, that's - the smoke goes down
10 there, doesn't it?

11 A Absolutely. That's why you smoke.

12 Q And the nicotine is in that smoke. Right?

13 A Yes, sir.

14 Q Do you know whether or not the nicotine is absorbed
15 into the body of the smoker in that process?

16 A My understanding is that is true.

17 Q Do you know whether or not in about eight seconds
18 that nicotine affects the central nervous system of
19 that smoker?

20 MR. DAVID: Object to the form of the
21 question, assumes facts not in evidence.

22 Q (By Mr. Holford) From the time it's ingested?

23 MR. RILEY: It's also ambiguous.

24 A I don't know any time frames.

25 Q All right, do you know that nicotine ingested into

1 the body by smoking cigarettes does affect the
2 central nervous system of the smoker?

3 MR. DAVID: The same objection. It's
4 vague and ambiguous.

5 A I don't know. I'll assume for the sake of this that
6 it does.

7 Q (By Mr. Holford) No. I am only interested if you
8 know that or not.

9 A Okay.

10 Q Do you know that?

11 A I know ---

12 MR. DAVID: She said she didn't know.

13 A I don't know.

14 Q And you say that's because you're not a medical
15 doctor?

16 A That is correct.

17 Q So in fact you don't have expertise to give opinion
18 about the effect or noneffect of nicotine on the
19 human body of a smoker who smokes cigarettes?

20 MR. RILEY: Object to the form.

21 MR. HOLFORD: I'm going to rephrase it
22 because it's a bit sloppy.

23 Q You don't have any expertise to give opinion on the
24 effect or noneffect of nicotine on a cigarette
25 smoker?

1 MR. RILEY: Object to the form of the
2 question, mischaracterizes the testimony.

3 Q Is that right?

4 MR. RILEY: It's vague and ambiguous.

5 MR. DAVID: I will echo that. It
6 certainly mischaracterizes the testimony.

7 A I know a lot about smoking, and I know a lot about
8 smokers because I work with alcoholics and drug
9 addicts, and there's hardly any alcoholic or any
10 drug addict that I've worked with in the past 25
11 years that didn't smoke. So I know a lot about
12 smoking, but if you're asking me medically if I know
13 what happens to the nicotine in the body, I will
14 refer you to a physician because I'm not a
15 physician. I know psychologically a lot about
16 smoking and about the people who smoke.

17 MR. HOLFORD: Okay, motion to strike as
18 nonresponsive.

19 MR. DAVID: Well, I'll object to the
20 motion. I think it's absolutely responsive to the
21 question. You just didn't like the answer.

22 MR. HOLFORD: Well, that's a sidebar,
23 Mr. David. I'll thank you to keep them out of the
24 deposition.

25 MR. DAVID: I kind of like them myself.

1 Q (By Mr. Holford) Now, Dr. Phelan, what I'm asking
2 you specifically is whether you have any expertise
3 to give opinion about the effect or noneffect of
4 nicotine on a cigarette smoker?

5 MR. DAVID: I object to the question.
6 It's been asked and answered, and it's further vague
7 and ambiguous.

8 A I will have to answer the same way I did because if
9 you're asking me do I know a lot about smokers and
10 about the psychology of smokers and about people who
11 smoke, I've got a lot of experience with that. I've
12 got 25 years of working with alcoholics and drug
13 addicts, but if you're asking me do I know precisely
14 how nicotine affects the body, I feel that's a
15 medical question, and I'm going to refer you to a
16 physician because I'm not a medical person.

17 MR. HOLFORD: Object, nonresponsive,
18 motion to strike.

19 MR. DAVID: Well, I object to your
20 motion, move to strike it.

21 Q (By Mr. Holford) Now, Dr. Phelan, I am asking you
22 specifically about the chemical nicotine, all right,
23 and whether it has or has not any effect on the
24 smoker. Okay? Now, I'll state it again.

25 A Okay.

1 Q You do not have any expertise to give opinion on the
2 effect or noneffect of nicotine on a cigarette
3 smoker. Isn't that right?

4 MR. DAVID: Object to the form of the
5 question. It's been asked and answered twice.
6 You're badgering the witness. She has been
7 responsive to your question. You're going to get
8 the same response to your question, and this is the
9 last time that I'll let her answer it.

10 A I know the psychological effect of nicotine on the
11 person. I'm not going to presume that I can tell
12 you about the internal organs and their response to
13 the nicotine because I'm not a physician. I want to
14 refer you to the physician, but I know a lot about
15 the psychological effects.

16 Q (By Mr. Holford) All right. All right, now, but
17 you mean specifically the psychological effects of
18 nicotine, right, is what you're saying?

19 A I'm saying the psychological effects of smoking and
20 nicotine as contained in the smoke.

21 Q Well, do you have any expertise to give opinion
22 about the psychological effects on a smoker of
23 nicotine?

24 MR. DAVID: Assuming there are any.

25 A See, I'm only talking about people who smoke. I

1 know what the psychological effects of smoking are,
2 and if we assume that there's nicotine in the smoke,
3 then obviously the answer is yes.

4 MR. HOLFORD: Well, I'll say it's not
5 responsive and move to strike.

6 MR. DAVID: I object to the motion.
7 It's absolutely responsive.

8 Q (By Mr. Holford) Now, Dr. Phelan, I'm asking you
9 simply and only about nicotine, effect or noneffect.
10 All right? I'm not asking you about the totality of
11 smoking. Okay?

12 MR. DAVID: Well, then whatever question
13 you're going to ask now has been asked and answered.

14 Q (By Mr. Holford) Do you have any expertise to give
15 opinion about the psychological effects of nicotine
16 on a cigarette smoker?

17 A As and if it's contained in cigarettes, and I'm
18 making the assumption that it is. That's all.

19 Q Yes, and I'm separating out nicotine from the
20 hand-to-mouth motion, from all the other things that
21 attend smoking. Okay?

22 A Uh-huh. (Yes)

23 Q And I want to know if you have any expertise to give
24 opinion on the psychological effect or noneffect of
25 nicotine on a cigarette smoker?

1 A Let me see if I understand. If you mean, given a
2 beaker in front of me of pure nicotine, if I know
3 what that would do to the human body?

4 Q To the human mind is this question.

5 A Or to the human mind?

6 Q Yes.

7 A I'm not a physician again or a chemist or a
8 biochemist, and I think that belongs to that
9 particular profession - set of professions to give
10 those kind of answers. All I can address is I
11 certainly know what - a lot about the psychology of
12 people who smoke, and if we assume there's nicotine
13 in the smoking, then I can address that
14 specifically.

15 Q Well, but, Dr. Phelan, if you don't understand what
16 effect if any nicotine has on the human psyche, then
17 how can you address that in addressing smoking?

18 MR. DAVID: Well, I object to the
19 question, misstates her testimony, absolutely
20 misstates her testimony.

21 A Yeah, that wasn't what I said.

22 Q (By Mr. Holford) Well, can you answer that
23 question?

24 MR. DAVID: No, no, I object to the form
25 of the question. It's a misstatement of her

1 testimony. She can't answer.

2 Q (By Mr. Holford) Do you understand that they make
3 their objections, and then unless he instructs you
4 not to answer ---

5 A I know.

6 MR. DAVID: Well, I will instruct her
7 not to answer a question that misstates her
8 testimony.

9 MR. HOLFORD: Are you instructing her
10 not to answer this?

11 MR. DAVID: Yes, I am.

12 Q (By Mr. Holford) Are you going to follow his
13 advice?

14 A Sure.

15 Q Is he your lawyer?

16 A No.

17 Q Well, you just ---

18 MR. DAVID: Don't argue with the
19 witness.

20 MR. HOLFORD: Oh, yeah, all right.

21 Q Now, Mr. David is not your lawyer. Right?

22 A No, sir.

23 Q Okay, but you're going to follow his instruction.
24 Is that right?

25 A Because it made sense to me, yes.

1 Q Well, I'm going to require you to answer the
2 question, Dr. Phelan. I'm asking you to answer it.
3 Are you going to answer it?

4 A Well, I don't remember it ---

5 Q We'll repeat it.

6 A --- at this point.

7 MR. DAVID: Wait. First of all, let's
8 get something straight on the record.

9 MR. HOLFORD: Yeah.

10 MR. DAVID: You can't require this
11 witness to answer a question, Mr. Holford. The
12 court can require the witness to answer a question.
13 If I instruct a witness not to answer and if the
14 witness says that she's not going to answer, then
15 it's not up to you to require this witness to
16 answer. You can go ahead and ask the question again
17 all you want.

18 MR. HOLFORD: Right.

19 Q Mr. David is technically right. I don't have the
20 power, you know, to make you speak.

21 A Of course.

22 Q But up to this point, you've said that you're
23 accepting Mr. David's instruction. Right?

24 A Well, I said in that instance it made a lot of sense
25 to me. So I accepted that.

1 MR. DAVID: Can't you restate your
2 question? It seems to me that it's eminently
3 restatable.

4 MR. HOLFORD: I don't remember the words
5 either, Mr. David. I am going to ask the reporter
6 to repeat that question.

7 (The last question was read by
8 the reporter.

9 MR. DAVID: I will object to the form of
10 the question because it misstates her prior
11 testimony, but if you understand the question, Dr.
12 Phelan, you answer it as you understand it, and if
13 you want to qualify your response, you are entitled
14 to do that.

15 A Well, I'm pretty much going to give you the same
16 answer I did, that I know a lot about smoking and
17 the psychology of people who smoke and about the
18 effects that the cigarettes have on people who
19 smoke. If I assume they contain nicotine, then I
20 have to respond yes, I know something about the
21 response to the human psyche or psychology about
22 cigarettes that contain nicotine and their effect on
23 people.

24 Q (By Mr. Holford) Tell me what you understand about
25 the effect of nicotine on the human psychology.

1 A Well, I'm not going to be able to single out
2 nicotine. I'm going to talk about cigarettes, which
3 I'm assuming contain nicotine, because I'm not going
4 to separate it out as a beaker full of pure nicotine
5 because I've already stated I think that question is
6 better asked to a chemist or a physician.

7 Q All right. Well, let's do it this way then: You
8 know, do you know that one drop of nicotine ingested
9 or injected into a human being will kill that
10 person?

11 MR. DAVID: I object to the question.

12 Q (By Mr. Holford) Do you know that?

13 A I know that nicotine poisoning can occur, quite
14 right, yes.

15 Q All right. All right, so let's not talk about a
16 beakerful. All right, let's talk about a mist of
17 nicotine, all right, pure nicotine, nothing else.

18 A I know that in its pure form -- and I know this only
19 as a layperson from stuff that I have read -- that
20 pure nicotine is considered a poison.

21 Q Well, let's take a cigarette, and then we'll put it
22 on a machine to take - to puff it down to, you know,
23 a stub, and out of that smoke this machine extracts
24 the nicotine, all right, and we are going to take
25 that much nicotine. It's probably a very small

1 amount. Right?

2 A I have no idea.

3 MR. DAVID: Well, let's ---

4 Q But it doesn't kill a person, right, because that's
5 what a smoker gets when they smoke a cigarette.
6 Right?

7 A I have no idea.

8 MR. DAVID: Let's make it clear on the
9 record that this witness is being offered as an
10 expert witness on the issue of addiction. Do you
11 understand that?

12 MR. HOLFORD: I understand you gave me
13 her report. I'm not going to agree to any
14 conclusions, Mr. David.

15 Q (By Mr. Holford) Now, Dr. Phelan ---

16 MR. DAVID: She is not a cigarette
17 design expert. You understand that?

18 MR. HOLFORD: Yes, uh-huh.

19 Q (By Mr. Holford) Dr. Phelan, are you willing to
20 talk about the amount of nicotine in one cigarette
21 taken out of that cigarette?

22 A No, sir, because I don't have any idea about that.

23 Q Well, that's what I'm trying to get to.

24 A I don't have any idea how much or how little or how
25 whatever nicotine is in each cigarette.

1 Q Or what effect that nicotine has on the human body
2 or mind. Right?

3 MR. DAVID: Object to the form of that
4 question.

5 MR. BIERSTEKER: Asked and answered as
6 well.

7 A I go back to - I can talk about smokers. I can talk
8 about smokers who smoke cigarettes, which contain
9 some kinds of nicotine.

10 Q (By Mr. Holford) All right, does the nicotine in a
11 cigarette have any effect on the body of a person
12 who smokes it, in your professional opinion?

13 A I think you're asking a medical question. I can
14 talk about the psychology of smokers. I can talk
15 about what they get from cigarettes, why people
16 smoke.

17 I cannot talk about the specifics of the
18 internal organs that are affected by anything they
19 ingest, either nicotine or chocolate or anything
20 else. I think those are questions that you have to
21 ask a physician.

22 Q Dr. Phelan, have you in your many, many, many times
23 of testifying in court ever been instructed by a
24 trial judge to just answer the question asked?

25 A Oh, yes, sir.

1 Q Would you -- are you trying to do that here?

2 MR. DAVID: Sounds like ---

3 MR. RILEY: What - answer your
4 questions?

5 A I'm trying to answer your questions, yes, sir.

6 MR. BIERSTEKER: That was entirely
7 responsive.

8 Q (By Mr. Holford) My question here right now is ---

9 MR. BIERSTEKER: Compound, vague and
10 ambiguous.

11 Q --- in your professional opinion, does the nicotine
12 in a cigarette have any effect on the body of a
13 person who smokes it? If you don't know, just say,
14 "I don't know."

15 MR. DAVID: The question has been asked
16 and answered.

17 A It isn't just a simple I don't know because what I'm
18 trying to help you understand is the area I can talk
19 about is the psychological effects of smoking, which
20 does indeed contain some amount of nicotine, has on
21 the person. I can't separate those two out.

22 MR. HOLFORD: Yeah, and I move to strike
23 the response to this question and the preceding
24 question, which was similar, on the basis of
25 nonresponsiveness.

1 MR. DAVID: Object to the motion.

2 MR. RILEY: Could we take a break, Doug?

3 MR. HOLFORD: Well, I would like to
4 finish this. It's just five til 10.

5 MR. DAVID: We've been going an hour.

6 MR. HOLFORD: Well, on an hour, we can
7 take a break.

8 MR. DAVID: It is an hour. Let's take a
9 break.

10 MR. HOLFORD: No, it's five til 10.
11 It's not five after 10.

12 MR. DAVID: We're taking about a
13 five-minute break. Let's go.

14 MR. HOLFORD: Well, Mr. David, I'm
15 conducting this deposition, and I said at an hour we
16 can take a break.

17 MR. DAVID: We are taking a break, Doug.

18 MR. HOLFORD: Okay.

19 Q (By Mr. Holford) Dr. Phelan ---

20 MR. DAVID: Doctor, we're taking a
21 break.

22 Q Are you taking a break, too, Dr. Phelan?

23 A I guess so. I was wanting another cup of coffee
24 anyway.

25 MR. HOLFORD: All right.

1 (Recess - five minutes.

2 Q (By Mr. Holford) Now, in your opinion, you know a
3 lot about cigarette smoking. Right?

4 A That is correct.

5 Q Okay, but in your opinion, there is no such thing as
6 nicotine dependence caused by cigarette smoking. Is
7 that right?

8 A I do not believe it's a dependent or addiction kind
9 of thing. I believe it's a bad habit.

10 Q Then my statement is correct. Right? In your
11 opinion, there is no such thing as nicotine
12 dependence caused by cigarette smoking. Is that
13 right?

14 A I'm not going to say. I'm not going to say. I
15 don't know whether there could be or there couldn't
16 be. I don't happen to believe it.

17 Q All right, in your opinion, there's no such thing as
18 nicotine addiction caused by cigarette smoking.
19 Right?

20 A That is correct. I do not believe it is an
21 addiction. I believe it is a habit.

22 Q And in fact you've never testified under oath
23 anywhere regarding nicotine dependence or nicotine
24 addiction caused by cigarette smoking. Is that
25 right?

1 A No, because I don't believe it's a dependent or an
2 addiction.

3 Q My statement is correct. Right?

4 A That is correct.

5 Q And as a consulting expert, you've never given
6 opinion on nicotine addiction or dependence caused
7 by cigarette smoking. Right?

8 A I can't give an opinion on something I don't
9 believe. I don't believe that it is an addiction.
10 I believe it's a dirty habit.

11 Q And when you say "believe" there, you're saying that
12 is your professional opinion?

13 A That is my professional opinion, yes, sir.

14 Q Now, do you smoke?

15 A I have been a smoker.

16 Q Have been. What was the date of your last
17 cigarettes ever - not exact date, but, you know ---

18 A I was going to say I can't give you the last date.
19 I was in my early thirties. So it's been awhile
20 ago.

21 Q But since that time in your early thirties, you've
22 never smoked again?

23 A I have never smoked again.

24 Q Were you already a psychologist at that time?

25 A No, sir, I was not.

1 Q I mean, I'm not subtracting years or anything. So
2 what - where were you in life at that time that you
3 had your last cigarette ever?

4 MR. RILEY: Object to the form of the
5 question.

6 A Where was I when I ---

7 Q I don't mean where physically. I mean where in your
8 life were you?

9 A Oh, I was a mother and a housewife.

10 Q At the time you stopped, did you have young
11 children?

12 A I had young children.

13 Q Were you in fact at the time you stopped early in
14 the pregnancy of another child?

15 A No, sir.

16 Q Did you smoke through your pregnancies?

17 A Yes, sir.

18 Q After your children were born, did you come to
19 believe that smoking was not good for their young
20 bodies?

21 A No, sir.

22 Q All right, at what age did you first use any tobacco
23 product?

24 A I was 13.

25 Q You remember that pretty well?

1 A You bet. We learned out in the graveyard sitting on
2 tombstones.

3 Q Where was that?

4 A That was in Florida at that time.

5 Q Where in Florida?

6 A My mother was working at Florida State University,
7 and that's where I was.

8 Q Jacksonville?

9 A No, that's Tallahassee.

10 Q Tallahassee, okay. Before that tobacco use, did you
11 use any corn silk or other products ---

12 MR. RILEY: Object to the form.

13 Q --- other than tobacco, I mean? Did you smoke any?

14 MR. RILEY: Same objection.

15 A I have a remembrance of us trying some corn silk and
16 stuff.

17 Q Cedar bark maybe?

18 A No, I just remember kind of corn silk.

19 Q Somebody said cedar bark in a previous deposition.

20 All right, but at age 13 was that first
21 tobacco a cigarette?

22 A Yes, sir.

23 Q Do you remember the brand?

24 A You betcha, Lucky Strike. That's all I ever smoked.

25 Q That's about 1940. Is that right?

1 A I don't remember the year. I think it was a little
2 earlier than that maybe, or maybe it was '40 -- I
3 don't know -- '40, '41.

4 Q You said born in 1927 and ---

5 A Right, November.

6 Q --- then 13 years would make '40 or '41?

7 A Somewhere in there. I know it was close to the
8 beginning of World War II.

9 Q It was also the time of the Lucky Strike Hit Parade,
10 wasn't it?

11 A Oh, yeah.

12 Q Did that - did you used to listen to the Lucky
13 Strike Hit Parade?

14 A Sure.

15 Q You saw them smoking on there and talking about
16 smoking?

17 A I was going to say I didn't see anything.

18 MR. RILEY: Object to the form of the
19 question.

20 Q Oh, this was radio, wasn't it?

21 A I'm sorry. There was no television in my day.

22 Q Yeah, yeah. So you just heard them encouraging
23 smoking. Right?

24 MR. BIERSTEKER: Object to the form ---

25 MR. DAVID: Object to the form of the

1 question.

2 Q (By Mr. Holford) Well, did they encourage smoking?

3 A They advertised cigarettes is what I was going to
4 say I heard.

5 Q All right, they advertised the cigarettes to smoke.
6 Right?

7 A Yes, sir, yes, sir.

8 Q So would you say that they were encouraging smoking?

9 MR. DAVID: I object to the form of the
10 question.

11 MR. RILEY: Object to the form of the
12 question.

13 MR. DAVID: Asking the witness to
14 characterize what was in somebody else's ---

15 MR. HOLFORD: All right, I'll accept
16 that.

17 Q (By Mr. Holford) Did Lucky Strike Hit Parade
18 encourage your use of cigarettes, Lucky Strike?

19 A No, sir.

20 MR. RILEY: Object to the form of the
21 question.

22 MR. HOLFORD: Okay.

23 Q (By Mr. Holford) You liked the program?

24 A Sure, loved the music.

25 Q And was there any reason in particular that you

1 chose Lucky Strike to start smoking?

2 A I can't recall why it was Lucky Strike. I kind of
3 have a vague remembrance of one of the guys -- we're
4 all sitting out in this graveyard, you know, doing
5 this devilment, and I remember one of the guys had a
6 pack of Luckies, and I think that's why we started
7 with Lucky Strikes. It was the kid who was able to
8 get some from his home.

9 Q So you're testifying that - with the aid of your
10 training as a psychologist up to now, you're
11 testifying that the Lucky Strike Hit Parade and
12 cigarette advertising in general back at that time
13 had no part in causing you to try cigarettes?

14 A Absolutely not.

15 Q All right. Now, after that first use, how did your
16 amount of smoking progress?

17 A We would try it, you know. We would try it all the
18 time. We thought we were being very sophisticated,
19 grown up and daring. So every chance we got, we'd
20 all go smoking.

21 Q Typical pattern. Right?

22 MR. DAVID: I object to the form.

23 MR. RILEY: Object to the form.

24 A Typical for me.

25 Q (By Mr. Holford) From what you saw in your youth,

1 you were just a typical young smoker?

2 MR. RILEY: Object to the form.

3 Q Right?

4 A Certainly I was no different than my peers.

5 Q Right, okay. At some point did you -- did you
6 continue smoking Lucky Strikes?

7 A Never smoked anything else.

8 Q And at some point did you reach a leveling-off
9 amount?

10 A Well, I was a heavy smoker. I smoked - all those
11 years I smoked anywhere from two to three packs of
12 cigarettes a day.

13 Q Well, at what age did you reach the two to three
14 packs a day?

15 A Oh, I was smoking that much by the time I was 15.

16 Q Now, and then -- I'm sorry. Can you now recall from
17 age 13 about what age you were when you stopped?

18 A Well, I have a remembrance of being in my early
19 thirties.

20 Q Early thirties?

21 A So about 20 years later. Eighteen or 20 years later
22 is when I stopped.

23 Q Did you make more than one attempt to stop?

24 A Nope, loved them, never tried.

25 Q At the time you - so just on one day you just had

1 your last cigarette, and that was it?

2 A That's it. I laid that fresh carton on the table
3 and never touched another one.

4 Q At that time, had you been diagnosed with any
5 adverse effect of smoking?

6 A No, I was suffering from a bad cough.

7 Q And you didn't have any doctor take - did you have
8 any X-rays taken at that time that you had that
9 cough?

10 A I don't remember any being taken. I've had X-rays.
11 I just don't recall them being taken for that
12 particular cough.

13 Q All right, how long had you had that cough before
14 you quit?

15 A Quite awhile.

16 Q Was that cough that you were experiencing at the
17 time you quit any different from what's commonly
18 called a smoker's cough?

19 MR. DAVID: I object to the form of the
20 question.

21 MR. HOLFORD: I'll back up.

22 Q Is there such a thing as a smoker's cough?

23 A I've certainly heard that.

24 Q Do you know what that is?

25 A Yes, sir.

1 Q Was the cough that you were experiencing when you
2 quit more severe than a smoker's cough?

3 MR. DAVID: I am just going to object to
4 the form.

5 A I don't know whether it was - you know, I don't know
6 how it contrasted with someone else. It was my
7 experience it was a bad cough, and I had had them
8 before.

9 Q You mean did you have that bad cough continuously
10 before the time you quit?

11 A I had had that bad cough several times in my life.
12 This time it seemed to hang on longer.

13 Q All right, so the cough you had at the time you quit
14 - is that what made you quit?

15 A No, sir.

16 Q What made you quit?

17 MR. RILEY: Object to the form.

18 A The reason I decided to quit was I had been reading
19 some stories in the Reader's Digest. You know, the
20 stuff about the risk of smoking and other illnesses
21 began to come out in the '50s, and I had been
22 reading those, and finally one day I read this
23 article -- and it just kind of grabbed me -- in the
24 Reader's Digest, and I thought "I'm not going to do
25 this anymore."

1 I had a brand-new carton of cigarettes I
2 just bought. I plunked that carton of Lucky Strikes
3 on my kitchen table and said, "I'm never going to
4 have another one," and I never did.

5 Q Do you recall the Reader's Digest story, Cancer by
6 the Carton?

7 A I don't remember the title. I was trying to
8 remember, and I just flat don't remember the title.
9 There were several in the book that - in the
10 Reader's Digest book that I had been reading, but
11 this was like the coup de grace. This was the one
12 that just tipped the scales, and I said, "That's
13 it."

14 Q Well, what you were reading then was a compilation
15 of Reader's Digest stories?

16 A Well, we got Reader's Digest. In those days, it was
17 a very popular magazine and particularly in military
18 families. We got the Reader's Digest. I had been
19 reading stories in the Reader's Digest since, I
20 guess, about the early '50s or certainly by the
21 middle '50s, and this was just one that finally was
22 the coup de grace that I said, "That's it."

23 Q You were in a military family?

24 A Yes, sir.

25 Q Now, before this time in the early or mid '50s, had

1 you ever seen such an anti-smoking story before?

2 MR. BIERSTEKER: Object to the form.

3 MR. RILEY: Object to the form.

4 A I had certainly had both in school and other places
5 heard about the dangers of smoking. I had heard
6 about it in school as early as the eighth grade
7 because we had some health science projects that
8 came in and talked to us with pickled lungs in jars
9 and all that stuff, but I didn't begin reading the
10 stories in the Reader's Digest until the '50s. It
11 was after World War II. I can't give you - pinpoint
12 you days, but my memory is from about '51 or '2 on,
13 the Reader's Digest began to be filled with stories.

14 Q Well, do I gather that until the middle or early
15 '50s when you saw these stories in the Reader's
16 Digest you hadn't seen anything before that made you
17 quit. Right?

18 A I had seen things. I had never decided to quit
19 until those - until I finally read that last story
20 that really hit my mind.

21 Q Well, what I mean is the instances of mention of the
22 risks of smoking in school, the - anything you had
23 seen in the paper or magazines or anything. Before
24 the mid '50s, none of those ever caused you to
25 attempt to quit. Is that right?

1 A That is correct. I was a kid. I was invincible. I
2 liked smoking. I didn't believe it would happen to
3 me.

4 Q All right, now, what -- start over.

5 How old were your children at this time in
6 your early thirties?

7 A Let's see. The boys were in school, and the little
8 girl wasn't. I can't give you ages right now, but
9 they would have -- I guess the one boy was in
10 school. The other may have been in kindergarten,
11 and the little girl was not in school yet.

12 Q Three to seven range, like that?

13 A Yeah, or eight, yeah.

14 Q All right, you had two boys and a girl?

15 A Yes, sir.

16 Q And what was your educational achievement at that
17 time?

18 A I was a high school graduate, and I had had one year
19 off at school, and then, you know, it was wartime.
20 I went off and got married at 17 and had babies.

21 Q So you completed college after this time?

22 A Yes, sir. I didn't go to college until I was in my
23 thirties.

24 Q Do you have your CV?

25 A Yes, sir, I brought it.

1 MR. HOLFORD: Mark this as Exhibit 1.

2 (Phelan Exhibit No. 1 marked for
3 identification.

4 Q (By Mr. Holford) What the reporter has marked as
5 Exhibit 1 to this deposition - is that your
6 curriculum vita?

7 A Yes, sir.

8 Q We'll call it CV for short?

9 A Yes, sir.

10 Q Is your CV, Exhibit 1, complete?

11 A It's not quite up to date. There are a couple of
12 things I've been to since for training that aren't
13 on there that are recent, but it's mostly up to
14 date.

15 Q So the only things missing on Exhibit 1 are some
16 trainings you have been to?

17 A Yes, sir, there has been about three recently that
18 I've attended, and I know they're not on there.

19 Q What were those trainings about?

20 A One was the use of the MMPI in forensic work.

21 Q What is MMPI?

22 A That's the Minnesota Multiphasic Personality
23 Inventory and its use in forensic work.

24 Q Forensic meaning for court testimony?

25 A Yes, yes. Forensic psychology is that branch of

1 psychology that deals with the psychology of
2 jurisprudence or the science of law.

3 Q All right, what was the next one?

4 A The other one I went to was a program on forensic
5 work that had to do with children and the interface
6 between the legal profession and the psychology
7 profession, was put on by the institute - put on by
8 the law school in Miami and the forensic
9 psychologists in Florida.

10 Q That again addressed forensic issues?

11 A That addressed the issues of children in
12 relationship to forensic issues of all types.

13 Q All right, the last one?

14 A The last one was the treatment of personality
15 disorders that dealt with mostly borderline and
16 histrionic and narcissistic personality disorders,
17 and that was in San Antonio.

18 Q Now, your CV, Exhibit 1 - is it all true?

19 A Yes, sir.

20 Q Has any of the studies or other work described in
21 your CV, Exhibit 1, involved tobacco use?

22 A Are you asking if I've published anything? Is that
23 what you mean?

24 Q Well, you know what's in your CV. Right?

25 A Yes, sir, yes, sir.

1 Q So I'm only asking about things described in your
2 CV.

3 A Okay.

4 Q Everything you've published is shown in your CV,
5 isn't it?

6 A Yes, sir, yes, sir. I was going to say I have not
7 broken it down to specific things I've covered like
8 borderline personality, smoking, drinking or any of
9 that. I've talked about my employment history and
10 kind of where I've worked, and I've talked about
11 teaching experience, and I've talked about training
12 and organizations I belong to, but I haven't broken
13 it down into, you know, specific details except
14 probably more around substance abuse than anything
15 else.

16 Q Okay, so has any of the articles, studies or other
17 published works or unpublished works that are
18 described in your CV, Exhibit 1, involved tobacco
19 use as a point of discussion?

20 MR. DAVID: I object to the form of the
21 question. It's vague and ambiguous in terms of what
22 you mean by "works" and in terms of what you mean by
23 the term "involved."

24 A I don't have any publications in here that directly
25 address tobacco.

1 Q (By Mr. Holford) All right, thank you. So I - it's
2 true then that none of the articles or - published
3 or unpublished materials that are described in your
4 CV, Exhibit 1, involve nicotine dependence or
5 addiction?

6 MR. DAVID: Same ---

7 Q Right?

8 MR. DAVID: Same objection as to the
9 prior question, and additionally it assumes facts
10 not in evidence, that is, that there is such a thing
11 as nicotine dependence or addiction.

12 A Again, I was going to say I don't believe that. So,
13 you know, I see it as a bad, dirty habit.

14 Q (By Mr. Holford) It's pretty clear then that your
15 CV, Exhibit 1, doesn't have anything in it that
16 discusses it. Right?

17 A That's right. I have a lot in here that discusses -
18 that dealt with substance abuse and addictions
19 related to that.

20 Q Oh, all right. What addictions and substance abuse
21 have your works described in Exhibit 1 discussed?

22 A Primarily my issues have been related to alcohol,
23 although there - certainly we treated many people
24 who are also drug addicted, but we treated more who
25 are alcoholics.

1 Q All right, so you've written on alcohol addiction?

2 A The substance - I've written mostly on alcohol and
3 also -- well, maybe it's just helpful if I kind of
4 go through it.

5 Q We're just on alcohol right now, Dr. Phelan.

6 A Okay.

7 Q I want to be fair. I asked if you had written on
8 alcohol addiction.

9 A Well, I was trying to remember what I had said about
10 alcohol.

11 Q That's all right. Refer to Exhibit 1, yes.

12 A Thank you. What I talked about a lot in here was
13 more that - had to do with a whole variety of
14 things. The stuff with alcohol in here was alcohol
15 treatment, the totality of it, as opposed to
16 specifically the addictive problems or any of that.

17 Q Well, in your experience in treating alcohol, is it
18 your opinion that you've had to deal with an
19 addiction to alcohol?

20 MR. RILEY: Object to the form.

21 A Have I dealt with people who were ---

22 Q Addicted to alcohol.

23 A That showed some alcohol dependency or addiction,
24 whatever phrase you want to use?

25 Q Yes.

1 A I have certainly dealt with many, many people who
2 had to be detoxed from alcohol.

3 Q That's because they were addicted to or dependent on
4 the alcohol. Right?

5 A That's because they certainly were toxic to alcohol.

6 Q Well, toxicity is not the same as addiction or
7 dependence, is it?

8 A That's right.

9 Q So, again, what I'm asking -- and let's just go
10 beyond your CV.

11 A Okay.

12 Q Have you treated patients for alcohol addiction or
13 dependence?

14 A Absolutely.

15 Q All right, and is it - does everyone who uses
16 alcohol become addicted to it?

17 A Well, there's debate on that. There's a lot of
18 debate if you used it long enough whether you would
19 become dependent on it or not. Certainly there are
20 people who see themselves as dependent upon alcohol
21 and who need help in recovery.

22 Q Then there are those people who really are addicted.
23 They don't just see themselves as - but they are
24 addicted to alcohol. Is that a distinction you
25 make?

1 A I certainly see people who have such a serious
2 dependency on alcohol through the years that I think
3 they burned out so many gray cells up there that,
4 yes, sir, I think they probably have lost the
5 ability to make a free choice.

6 Q Their use of it is then compulsive. It controls
7 them. Right?

8 A It controls them as opposed to them controlling it.
9 However, even there, it does not control their
10 ability to make a choice to get help because I had a
11 guy that was admitted to my program 58 times, and
12 the fifty-eighth time he finally decided maybe he
13 wanted to sober up. We sobered him up.

14 Q You based that on what he told you. Right?

15 A Based what on what he told me?

16 Q That he made his own decision to come in for help
17 and wanted to sober up. You base that on what he
18 told you. Right?

19 A No, no, I based it on he had been there 58 times.
20 We know what he had been saying and doing, and the
21 fifty-eighth time he finally got the message. He
22 said, "Yeah, I got a - I got to do something here
23 and sober up."

24 Q How do you know on his fifty-eighth visit in that
25 that time he got the message? How do you know that

1 now?

2 A Because he hadn't gotten the message any of those
3 other times. He had always said, "I don't intend to
4 drink - you can bring me in here and put me in this
5 program, but I don't intend to stop drinking. I
6 love drinking," and he would get drunk by the time
7 he got out to the first bar on the street.

8 Q And on the fifty-eighth time, he came in, and it was
9 different. He said, "Dr. Phelan, this time I want
10 to stop drinking." Right?

11 A There was an incident occurred that made him finally
12 see that he had to do something about his drinking,
13 yes, sir.

14 Q So the only way you know that his fifty-eighth time
15 was different than the 57 times before on his coming
16 in was that he told you that this was different. He
17 wanted to stop this time. Right?

18 A Sure, and we used to see him in AA. I mean ---

19 Q What was the incident that caused him to come in on
20 that fifty-eighth time?

21 A He got committed. He was always getting committed.
22 He didn't come because he wanted to. He got
23 committed, but he came in, and he pulled a gun on
24 me, and it was me and him in a big room with him
25 pulling a gun on me drunk as a lord.

1 Q This was that fifty-eighth time?

2 A Yeah, and I talked him down. I made him give me the
3 gun and took the gun away from him, and when I got
4 him detoxed and I talked to him, he was horrified
5 because he was very fond of me. He wouldn't have
6 done anything to hurt me, and he was about to kill
7 me, and so he decided -- that was the board between
8 the eyes. We talk about it in substance abuse. You
9 got to get the board between the eyes to get
10 somebody's attention before they decide they want to
11 get better. That was the board between the eyes
12 because he wouldn't have killed me for anything, and
13 he could have very easily.

14 Q Board between the - meaning getting hit with a
15 two-by-four?

16 A That's what we say about alcoholics. That's an old
17 expression. Yeah, we have to do something to get
18 their attention, and it's the board between the
19 eyes, and that incident was the board between his
20 eyes. He would not have done anything to kill me.
21 Here he was drunk and about to.

22 Q You're saying that, in your experience of dealing
23 with people addicted to alcohol, it has taken some
24 board between the eyes to get them finally to take
25 on quitting. Right?

1 A Not always, but generally they have to have some
2 reason. They're losing a job, or they're losing
3 their families, or they've had two or three DWIs, or
4 they kill somebody. Yeah, it takes ---

5 Q Or they've been diagnosed with cirrhosis of the
6 liver?

7 A That will do it. That will do it.

8 Q Now, Dr. Phelan, is there such a thing as a
9 genetically determined alcoholic?

10 A Well, some people believe there is. Certainly we
11 see it in families. There's still great debate on
12 whether it's a predisposition towards developing
13 alcoholism or if it's learned behavior or if it's
14 both. Certainly if you don't drink, even if
15 everybody in your family was an alcoholic, you're
16 not an alcoholic. So it depends on whether or not
17 you make the decision that you're going to drink.

18 I think, probably like everything else, we
19 have a propensity towards developing substance abuse
20 if it's in our families, just like a propensity
21 towards developing diabetes. So probably -- I tell
22 young people, "If you've got it in your family, then
23 you probably ought to be real careful about
24 drinking."

25 Q Now, you mentioned other drugs that you've had

1 addiction issues in?

2 A Uh-huh. (Yes)

3 Q What drugs are those?

4 A Well, every street drug there was. We got into the
5 program down in San Antone. I mean, we had gasoline
6 sniffers, glue sniffers, heroin addicts and
7 prescription drug addicts, and we had cocaine
8 addicts. We had pot. There was nothing we didn't
9 have. Whatever is out there on the street - we had
10 it.

11 Q So in your opinion, Dr. Phelan, there is such a
12 thing as heroin addiction?

13 A Yes, sir.

14 Q And there is such a thing as cocaine addiction?

15 A People believe that, yes.

16 Q Well, I said in your opinion.

17 A Well ---

18 Q In your opinion, is there such a thing as cocaine
19 addiction?

20 A I think that people can get psychologically
21 dependent and addicted to all these substances, yes.
22 I think there is some debate about whether or not
23 it's a physiological dependency. I think you can
24 still find some debate on that because there were so
25 many people who used cocaine at the turn of the

1 century in this country who were not addicted to it
2 and got off of it with apparently not a lot of
3 problems.

4 Q Isn't the form - isn't the purity of cocaine in use
5 today much higher than what they were ever able to
6 get at the turn of the century?

7 A Well, I don't know that that's true because I don't
8 know that we analyzed the cocaine they got at the
9 turn of the century in this country as well as we -
10 with the same instruments that we analyze today, but
11 what I - what I do know is I suspect some of the
12 more manufactured stuff, the crack cocaine, et
13 cetera, may have highly addictive processes.

14 Q That is in common use on the street today, in other
15 words?

16 A Sure, you can buy it out there.

17 Q Are these criteria for drug dependence or addiction
18 -- I'm going to start over.

19 Are these primary criteria for drug
20 dependence or addiction highly controlled or
21 compulsive use, psychoactive effects and
22 drug-reinforced behavior?

23 A May I ---

24 MR. DAVID: Object to the form of the
25 question?

1 A May I see that so I can just kind of see? Do you
2 have the DSM III there?

3 Q Since my memory isn't that good, Dr. Phelan, I am
4 reading from a document here.

5 A Excuse me.

6 Q But I wish to just ask you, in your experience and
7 professional opinion, are those primary criteria of
8 drug dependence? Do you want me to repeat them?

9 A Yeah, would you, please.

10 MR. DAVID: Just a second. I just want
11 to object because if you are reading from a
12 document, I think the witness is entitled to see the
13 document that you're reading from.

14 MR. HOLFORD: Well, I asked that of Mr.
15 Riley in a previous deposition.

16 MR. DAVID: Or to know what the document
17 is.

18 MR. HOLFORD: And he wouldn't show me,
19 okay, and that's on record. I think you're talking
20 about a witness referring to a document having to
21 show what the document is.

22 MR. DAVID: I stay with my objection.

23 MR. HOLFORD: All right.

24 MR. DAVID: You can go ahead.

25 Q (By Mr. Holford) Now, are these primary criteria

1 for drug dependence or addiction highly controlled
2 or compulsive use, psychoactive effects?

3 A What do you mean by that? Can you give - can you
4 define that, psychoactive effects?

5 Q All right, do you have a definition for it, Dr.
6 Phelan?

7 A You used it. I don't know what you mean by it.

8 Q I'll ask you what - in your professional opinion and
9 experience, what does the term "psychoactive
10 effects" mean?

11 A I don't know - I don't know what they mean by that.

12 Q Do you know what the term "drug-reinforced behavior"
13 means?

14 A Yes, sir.

15 Q What does that mean?

16 A That means you like it, and you do it again.

17 Q Oh, okay. So in your opinion, drug-reinforced
18 behavior simply means a freewill exercise, choice of
19 the individual based on whether they like it or not.
20 Is that right?

21 A I believe that's why most people start using
22 substances that are mind altering in some way. I
23 believe that they like it. They like the effect.
24 They enjoy it, and that's why they start using it.

25 Q So is my statement correct?

1 MR. DAVID: Which one?

2 MR. RILEY: Which statement?

3 MR. HOLFORD: My last - read my last one
4 back.

5 MR. DAVID: "Is my statement correct?"

6 A I thought you had something else in it. That's why
7 I had to qualify it.

8 MR. HOLFORD: All right, let's read it
9 back.

10 (The last question was read by
11 the reporter.

12 A My answer is I believe that when mostly young people
13 start out using substances they do it because they
14 enjoy the effect that the substance has on their
15 performance of some kind or other, and they enjoy
16 the experience of being high.

17 Q (By Mr. Holford) So in your opinion, is
18 drug-reinforced behavior simply the freewill
19 exercise of the individual to use the product
20 because they enjoy using it?

21 A It's not that simple. I say when young people start
22 out using these mind-altering chemicals, it is
23 because they enjoy the effect of those chemicals on
24 their feelings, on the way they're behaving. They
25 think they are - they can be much more sophisticated

1 and bon vivant if they are using those substances.

2 As you go through time, some changes seem to
3 occur so that out here the 60 year old person still
4 using the chemicals is having a very different - is
5 using them for a very different reason than the
6 young guy over here at 16 who tries them.

7 Q Then certainly the person who has just started using
8 a substance isn't yet dependent or addicted on it.
9 Right?

10 A He may be psychologically addicted in terms of he
11 feels better. He feels more sophisticated.
12 Certainly that's why we all smoked. We felt like
13 big shots. We were grown-ups.

14 Q As kids you mean?

15 A As kids, absolutely. We wanted to be grown up as
16 quick as we could, and grown-ups smoked, and that's
17 why we smoked. So that's why we drank. That's why
18 everybody tried beer and all that good stuff when
19 they were 16, 17, 18.

20 Q Okay, I guess let me define it a little better.

21 A Okay.

22 Q When a person first picks up some substance, I mean,
23 before they've even used it, they're certainly not
24 addicted or dependent yet. Right?

25 A That is correct.

1 Q But after some period of use, that person can become
2 dependent or addicted if it's a mind-altering
3 substance. Right?

4 MR. DAVID: I object to the form of the
5 question. I think it's a - I think it's an
6 incomplete hypothetical.

7 Q Is that right?

8 A Certainly there are those who believe what you just
9 said.

10 Q Well, do you believe it?

11 A I think that ---

12 MR. DAVID: I am going to object to the
13 form of the question. It's an incomplete
14 hypothetical.

15 MR. HOLFORD: You can say same
16 objection.

17 A If I can remember it, I believe that there are a lot
18 of people who believe that. I certainly have heard
19 folks tell me that from the first they felt they had
20 to have that substance. Now, I think
21 physiologically that wasn't true. I think that
22 they've found such pleasure in the effect of the
23 substance on them that they wanted to have more.

24 Q (By Mr. Holford) Do you know the physiological
25 effect of cocaine on the human body?

1 A Well, I certainly can't speak to that as a medical
2 issue. I can certainly tell you the behavioral
3 aspects of cocaine on people. I can talk about the
4 psychology of people who use cocaine, but I cannot
5 tell you the physiological effects because, again, I
6 think that's a medical issue.

7 Q Now, let's take heroin. You do agree that heroin is
8 an addicting substance. Right?

9 A I certainly agree that heroin can become an
10 addictive substance, you bet.

11 Q That is after some period of use of the substance a
12 person will become addicted to using it, the heroin.
13 Right?

14 MR. RILEY: Object to the form.

15 A I think that's probably true in most cases after a
16 continued usage of it over long periods of time.

17 Q All right. Now, do you conclude that such a user
18 who has become addicted on heroin is addicted
19 because they show a highly controlled or compulsive
20 use, the heroin has psychoactive effects on them,
21 and they exhibit a drug-reinforced behavior?

22 MR. BIERSTEKER: Object to the form of
23 the question.

24 A That's not my criteria. So that isn't the way I use
25 it. Okay.

1 Q All right, what are your criteria for heroin
2 addiction?

3 A Well, I don't talk about -- see, I don't want to get
4 hung up on the term "addictions." I talk about,
5 look -- and this is exactly the way I talk to my
6 druggies and my alcoholics.

7 Q Talk about what? I didn't get that.

8 A I said I don't want to talk about addictions and get
9 hung up on these definitions. I say, "Look, if
10 you've got a problem, if it's interfering with your
11 health, if it's interfering with your job, if it's
12 interfering with your wife and family, if you've got
13 three or four DWIs, it's interfering with your
14 health, then you got a problem, and you need to do
15 something about it."

16 I don't care whether you call it addiction,
17 dependency or anything else. It doesn't matter. If
18 it's a problem in any of those areas and it's
19 impairing those areas of your life, you got a
20 problem. You better do something about it.

21 Q But, now, just how many years have you been a
22 treating, licensed psychologist?

23 A I have been licensed in Texas since 1975. I've been
24 working with alcoholics since the middle '60s.

25 Q Now, so based on your experience and training, in

1 your opinion, heroin is an addicting substance, but
2 nicotine is not. Right?

3 A That is correct.

4 Q So that's why I wanted to talk about - to you about
5 heroin, understanding that you don't discuss heroin
6 addiction with your patients who you're treating for
7 heroin use?

8 A I don't even talk in those terms.

9 Q Right. Nonetheless, do you have - have you formed,
10 in your professional opinion, primary criteria for
11 defining whether or not a patient of yours is
12 addicted to heroin?

13 A If they're having withdrawal symptoms that are
14 severe, I certainly think they need medical help,
15 but that doesn't have anything to do with a criteria
16 for getting them into treatment. I would get a
17 heroin addict into treatment because it's against
18 the law, and you're going to end up in a Texas
19 prison, and who wants to be over in Huntsville for a
20 long time, and I would also want to get them in
21 treatment because in order to get the drugs, you
22 know they're going to commit a lot of crimes to do
23 that.

24 So my issue is not that they've come in and
25 I want them there because of a dependency problem.

1 My issue is they're there because it is really
2 causing some problems in their lives. Now, if they
3 are using on a really frequent basis, they may have
4 to be detoxed and have some medical help because
5 there are some severe withdrawal symptoms.

6 Q Do you make the decision whether to detox a patient
7 that is using heroin on the basis of whether you
8 consider them addicted or not?

9 A No, I use it on - in terms of knowing how frequent
10 their use has been, what that's going to mean in
11 terms of detoxing.

12 When we would get patients in the program,
13 we would say, "Okay, what have you been using? How
14 much have you been using? When did you have your
15 last fix?" From that we're going to know whether
16 or not this person needs some medical treatment.
17 Someone who comes in and says, "I've been drinking,
18 you know, a quart of wine a day" ---

19 Q We're talking about heroin now.

20 A All right. Well, someone who comes in and says, "I
21 have been shooting up. I just shot up about five
22 hours ago, and the shot before that was such and
23 such a time" and so on and so forth, I'm going to
24 send him over to the medical unit and let him get
25 some detox because he's going to come down hard.

1 Q In your opinion, Dr. Phelan, are your patients that
2 you have sent over for detox or other medical
3 treatment for use of heroin - have they been
4 addicted to heroin?

5 A Again, I don't even - see, I don't even talk - it's
6 like you're talking to me in a language I don't
7 talk. I know what you're getting at, but I don't
8 even think that way. I think of the fact that they
9 have a drug problem, and that's what we've got to
10 treat them for, and at this point in time, they're
11 coming down, and they need some medical help.

12 Q Well, let me back up. Do you agree that there is
13 such a thing as heroin addiction?

14 A Sure, I think people can get addicted to heroin.

15 Q How do you define when a person is addicted to
16 heroin?

17 A I don't try to. I mean, I don't try to. It's not
18 the way I think, or it's not the way that I deal
19 with drug or alcoholics. I just don't think in
20 those terms.

21 Q You understand I'm not asking about what you've done
22 any time in the past. Right?

23 A Uh-huh. (Yes)

24 Q Dr. Phelan, can you define any criteria for whether
25 or not a person is addicted to heroin?

1 MR. RILEY: Asked and answered.

2 A I think I did. See, you're asking me to talk a
3 language I don't talk. It's like asking me to speak
4 in Greek. I don't speak that way. I talk in a
5 different language. I have a - I have a treatment
6 focus, and so I'm dealing with it only in that
7 perspective.

8 Q So is it true that, as you sit there, you cannot
9 define any criteria for whether a person is addicted
10 to heroin?

11 MR. DAVID: Object to the form of the
12 question.

13 MR. RILEY: Object to form.

14 A You know ---

15 MR. DAVID: Asked and answered, too.

16 A --- I think that it would depend a lot on each
17 individual case. I think these are individual
18 patients, and I have to approach each one of them in
19 an individual way to say whether or not I feel they
20 have a real addictive kind of problem.

21 Q (By Mr. Holford) So in the past in treatment of
22 your patients, in some instances, you have come to
23 the opinion that a patient had - that was a user of
24 heroin had an addiction problem?

25 A Sure. I've had patients come to me and say they're

1 addicted to heroin.

2 Q That doesn't mean they are, does it?

3 A Well, some of them I believed. I think they were
4 real honest old characters, you know, and they'd
5 come say, "Look, I know I'm addicted to it. I want
6 off of it. I want help." So we help them. That's
7 why we're there.

8 Q Can you, as you sit there now, define any common
9 criteria among these different patients that you've
10 had that were addicted to heroin?

11 A Well, where I worked, they were mostly Hispanic,
12 some black but mostly Hispanic, and they were mostly
13 lower socioeconomic upbringing. They may have made
14 a lot of money running drugs, but they were mostly
15 lower socioeconomic status and usually not very well
16 educated. So they were -- you know, they're from
17 San Antonio. They were mostly Hispanics from San
18 Antonio, and they've been in it a long time.

19 Q Well, do you think that heroin addiction is - that a
20 factor for heroin addiction is Hispanic gender?

21 MR. BIERSTEKER: That's not what she
22 said.

23 Q No, ethnicity?

24 MR. ALLEN: Doug, in all fairness to the
25 witness, your exact question was, "Have you seen

1 some common characteristics," and so what she was
2 telling you is whom she has treated. Then to state
3 what she said and try to turn it into something
4 different is unfair.

5 MR. HOLFORD: It's a question ---

6 MR. ALLEN: That's unfair.

7 Q (By Mr. Holford) Dr. Phelan, is being of Hispanic
8 origin a factor in becoming addicted to heroin?

9 A Oh, no, no, I'm not saying that you have to be
10 Hispanic to be a heroin addict, no, no. I'm just
11 telling you the people that I treated and saw in San
12 Antonio in that program. We didn't see that kind in
13 the program here in Austin. We had a very different
14 kind of clientele.

15 Q Because San Antonio then and now, unlike Austin then
16 and now, is predominantly people of Hispanic origin?

17 A Well, about 51 percent at that time, and certainly
18 they were people who had little resources that I
19 saw.

20 Q Is lower socioeconomic condition a factor in drug
21 use and maintenance of use?

22 MR. ALLEN: Object to the form of the
23 question.

24 A I don't think any more that it is. However, it
25 certainly has a strong hold on lower socioeconomic

1 classes of people of all kinds, whether Hispanic,
2 black or white or green or pink. It certainly is
3 more prevalent in poor areas.

4 Q Okay. Now, so you don't agree that highly
5 controlled or compulsive use, psychoactive effects
6 and drug-reinforced behavior are valid primary
7 factors for drug dependence. Right?

8 A I don't know if ---

9 MR. ALLEN: Object to the form.

10 MR. BIERSTEKER: Object to the form of
11 the question.

12 Q You don't know whether they are or not?

13 A I'm not quite sure what they mean. See, that's why
14 I was asking you if you could define some of that
15 for me because I just don't know quite what all that
16 means. It may be a great definition; it may not be.
17 It's just real unclear to me what they're talking
18 about.

19 Q Well, do you know what highly controlled or
20 compulsive use means?

21 A I'm assuming they mean that people use it very
22 frequently.

23 Q Well, does a very frequent use always mean a
24 compulsive use?

25 MR. DAVID: Well, just a second. I

1 object to the questioning now because if you're
2 asking Dr. Phelan what whomever authored whatever
3 document you are looking at means versus what she
4 would mean if she were using those terms, I think
5 it's an objectionable question.

6 MR. HOLFORD: No, I'm asking Dr. Phelan,
7 as I think my question stated, what highly
8 controlled or compulsive use means.

9 MR. DAVID: To her - means to her ---

10 MR. HOLFORD: Now, if she is going to
11 speak to anyone other than her, she will probably
12 say so.

13 MR. DAVID: I just want it straight on
14 the record. I don't want there to be any
15 misunderstanding there.

16 A I was going to say I don't know what they mean.
17 That's why I was asking you for the definition.

18 MR. DAVID: That's right.

19 A I am taking it to mean, as you read it to me, that
20 they're talking about that they use it frequently,
21 and they don't have a lot of control over it.
22 That's what I'm taking it ---

23 MR. DAVID: Let me just object here for
24 a moment and say, Dr. Phelan, you're not obligated
25 to make assumptions here as to what anybody else

1 means with respect to what Mr. Holford is reading
2 from, whatever Mr. Holford is reading from and
3 secreting under the table. You are not obligated to
4 take it - what they mean.

5 If Mr. Holford wants to ask you to assume
6 what they mean is this as a hypothetical question or
7 as a part of a hypothetical question, that's
8 appropriate. Otherwise, Doug, your questions are
9 objectionable.

10 MR. HOLFORD: And your remarks are
11 uncalled for, Mr. David.

12 Q (By Mr. Holford) Did you mean anything other than
13 what you understand ---

14 MR. DAVID: I will tell you, you know,
15 you're right. I never thought that I'd have to come
16 to a deposition and teach a class, but I guess I do.

17 MR. HOLFORD: That's insulting, Mr.
18 David, and it's what is called uncivil and
19 unprofessional. In this jurisdiction, those words
20 have specific meaning, and if you don't know what
21 they are, you ought to get local counsel to explain
22 it to you.

23 MR. DAVID: And then I will ask you to
24 treat the witness fairly, which you're not doing.
25 You are not treating this witness fairly. You are

1 obligated to treat this witness fairly, and you're
2 not doing that by virtue of the kinds of questions
3 that you are asking right now.

4 MR. HOLFORD: Which are all on the
5 record, aren't they?

6 MR. DAVID: So treat the witness fairly.

7 Q (By Mr. Holford) I have not asked you any questions
8 that are not on the record, have I, Doctor?

9 A I assume not. This gentleman is taking everything
10 down.

11 Q He looks very professional, doesn't he?

12 A He looks like he's real good at his job.

13 Q He's been doing it a long time, I know.

14 Now, Dr. Phelan, I've forgotten your last
15 answer.

16 A I have forgotten the question.

17 Q What does highly controlled - with regard to drug
18 dependence, in that field, in other words, what does
19 highly controlled or compulsive use mean to you?

20 MR. DAVID: To her?

21 MR. HOLFORD: Yeah.

22 A Because I don't know what this guy means -- that's
23 why I was asking you -- or girl, whoever it was that
24 wrote that -- what they meant.

25 What I have interpreted that statement to

1 mean is that someone is using something on a
2 frequent basis without control over it.

3 Q (By Mr. Holford) And what to you does psychoactive
4 effects mean, if anything?

5 A I don't know what they mean by that. I am not sure
6 at all about that. I really don't - I can't respond
7 to that.

8 Q If you think of it in terms of some material not
9 having any psychoactive effect, does that make any
10 sense?

11 MR. RILEY: Object to the form of the
12 question unless you can identify what material
13 you're talking about.

14 MR. HOLFORD: I asked her a question to
15 her mind, Mr. Riley. I don't know why you-all keep
16 referring to -- if I mean to ask her on what I'm
17 looking at here, I'll put it that way.

18 MR. RILEY: Doug, I didn't say anything
19 about what you're looking at. I objected to the
20 form, which I am entitled to do.

21 MR. HOLFORD: Okay.

22 A Can you ask it again? I'm sorry.

23 Q (By Mr. Holford) Yes, ma'am. I mean, I am just a
24 lawyer. So I don't want to be suggesting ---

25 A I know.

1 Q --- about psychoactive. You don't have anything in
2 your field that deals with psychoactive?

3 A Well, that was why I was asking you what they meant
4 by that. I wanted it defined in that context. If
5 you are wanting me to define what it means to me,
6 how I'm interpreting it ---

7 Q Psychoactive effects, yes.

8 A The best I can do is we talk about having - taking
9 something that reacts upon you in a psychoactive
10 way, for example, medication. If you took
11 antidepressants, it would have a psychoactive effect
12 on the person, or if you took the neuroleptics, they
13 would have a psychoanalytic effect upon that person.
14 So if that's what they mean ---

15 Q Is that what you mean by psychoactive effects?

16 A That's the way I'm interpreting that's what they
17 mean.

18 Q That's the way you're interpreting those words
19 "psychoactive effects"?

20 A Yes, sir, yes, sir.

21 Q All right. Now, what meaning do you put on the
22 terms "drug-reinforced behavior"?

23 MR. RILEY: That's been asked and
24 answered.

25 A The way I'm interpreting it again -- and this is my

1 interpretation of whoever wrote that statement -- is
2 that it's one of reinforcement. That's a learning
3 theory concept that what happens is you do some kind
4 of behavior. It brings about a beneficial effect,
5 and, therefore, you repeat that behavior.

6 Q Or if you're doing that behavior and then you lessen
7 or don't do it, you feel some effect of that?

8 MR. DAVID: Object to the form of the
9 question.

10 Q Is that included?

11 MR. DAVID: Object to the form of the
12 question. Is it included where?

13 MR. HOLFORD: In her thinking.

14 MR. DAVID: In her thinking versus ---

15 MR. HOLFORD: She's the one I'm
16 questioning, Mr. David.

17 MR. DAVID: In her thinking versus what
18 you are reading from?

19 MR. HOLFORD: And she's the one I'm
20 questioning. If I refer ---

21 MR. DAVID: In her thinking versus what
22 you're reading from?

23 MR. HOLFORD: If I mean to ask the
24 witness about the source that I'm looking at here,
25 it will be explicit in my question.

1 MR. DAVID: I think I'm going to object.

2 MR. HOLFORD: I object to these constant
3 comments.

4 MR. DAVID: Well, I'm going to object
5 because you are being exceedingly unfair to this
6 witness.

7 MR. HOLFORD: Well, while Dr. Phelan is
8 getting some water, you can assert unfairness, Mr.
9 David, and it's all asserted on account of how you
10 see the questions I've asked today. Right?

11 MR. DAVID: No, it's asserted on the
12 basis of the fact that you are asking this witness
13 how she -- what you should be asking this witness is
14 what these words would mean to her, not how she is
15 interpreting what the individuals who wrote those
16 words meant to them.

17 MR. HOLFORD: My questions will - are on
18 the record as to exactly what I've asked.

19 MR. DAVID: And they're on the record as
20 reflecting what she thinks those words meant to
21 those people who wrote them.

22 MR. HOLFORD: Yeah, we'll see.

23 MR. DAVID: We'll see.

24 Q (By Mr. Holford) Dr. Phelan, we were on the term
25 "drug-reinforced behavior." In your mind, does that

1 term have anything to do with the drug being used
2 causing this repeated behavior that you've
3 described?

4 A And I spoke of it in terms of learning because as a
5 psychologist I'm more comfortable with that. What
6 I'm interpreting they must have meant, the person
7 who wrote that, was that the person's behavior was
8 reinforced by the drug usage. That's the way I am
9 interpreting it.

10 MR. DAVID: I will move to strike.

11 Q When you say, "That's the way I'm interpreting it,"
12 that means that's your understanding of the term
13 "drug-reinforced behavior." Is that right?

14 A Let me see. That's my attempt to say that's the -
15 that's the interpretation I believe that person who
16 wrote that words - who put those words down meant.
17 That must be what they meant. I don't know.

18 Q You don't know what they meant?

19 A No.

20 Q You're just saying what you mean. Right? That's
21 right. You're saying what you mean. Right?

22 A I'm saying that's the way I'm interpreting what they
23 said.

24 Q Do you know, Dr. Phelan, if I'm reading from
25 something here or if I'm just making it up?

1 A I don't know. I would have to be interpreting it
2 whether you made it up or whether you are reading
3 from it or whatever. I'm having to interpret it.
4 Those aren't my words, and those are words from
5 somebody, and I'm having to interpret what they
6 meant. I'm trying to extrapolate it and interpret
7 what it means in words that I can understand.

8 Q The only way you can interpret it is from your own
9 understanding. Right?

10 A I can put it into words that make it understandable
11 to me. That's the best I can do.

12 Q And that is what you've done ---

13 A That's what I ---

14 Q --- on these terms. Is that right?

15 A Excuse me; I'm sorry. That's what I've tried to do,
16 yes, sir.

17 Q Is that - have you given us the best effort you can?

18 A I've tried to do - always try to do my best.

19 Q All right. Now, let's take the case of heroin
20 again. Applying -- now, let's back up.

21 Taking the case of heroin use, do these
22 terms, highly controlled or compulsive use,
23 psychoactive effects and drug-reinforced behavior as
24 you understand them - do they constitute primary
25 criteria for heroin addiction?

1 MR. DAVID: Object to the form of the
2 question.

3 A I don't know.

4 MR. DAVID: Is this a good time for a
5 break?

6 MR. HOLFORD: Sure.

7 MR. DAVID: Just take five minutes.

8 (Recess - five minutes.

9 Q (By Mr. Holford) Dr. Phelan, is this the first case
10 you've been retained by a tobacco entity on?

11 A Yes, sir.

12 MR. BIERSTEKER: Object to the form.

13 MR. RILEY: Object to the form.

14 Q (By Mr. Holford) Have you been retained by a
15 tobacco entity in this case?

16 MR. RILEY: Objection to the form.

17 MR. BIERSTEKER: Object to the form.

18 A I've been retained by attorneys.

19 Q Well, do they have a tobacco entity client?

20 A I'm assuming of course that they represent a tobacco
21 entity client.

22 Q It would make sense, wouldn't it?

23 A It makes sense to me, but I was hired by attorneys.

24 Q Who - what attorneys hired you?

25 A The firm of Jones-Day.

1 Q Which is where we are today in Austin?

2 A Yes, sir, yes, sir.

3 Q And was it a particular attorney?

4 A You know, I don't remember who the first ones I met
5 were. It's been some time ago. I just don't
6 remember who they were.

7 Q About when was it?

8 A I don't recall that either. I spoke to them some
9 time ago for the first time.

10 Q Yes. Would it have been before 1990?

11 A Yeah, I think so.

12 Q Well, was it in regard to this case or some other
13 case?

14 A No, sir, no, sir, another.

15 Q Another case?

16 A Yes, sir.

17 Q What was that case?

18 MR. BIERSTEKER: Object - objection.
19 Let's establish first whether she's going to be a
20 testifying expert or a consulting expert before you
21 have the identity of the case revealed.

22 MR. HOLFORD: I don't believe that the
23 identity of the case would be privileged even if she
24 was just a consulting expert.

25 MR. BIERSTEKER: I disagree about that,

1 and I'm going to ask that she not answer that if you
2 don't first establish the nature of the consulting
3 work. I don't think you're telling her that.

4 Q (By Mr. Holford) Now, in that case, did you become
5 a designated -- do you know what being designated as
6 a testifying expert is?

7 A Yes, sir.

8 Q Okay, in that -- well, I guess so. You've - you've
9 been done that a lot. Right?

10 A I've been done that.

11 Q Now, in that first case that you mentioned, were you
12 - did you come to be designated as an expert?

13 A I was acting as a consultant.

14 Q Was that - was the time of that first contact with
15 Jones-Day a - was it before 1988?

16 A I really honestly don't remember. I just don't
17 remember when the first contact was.

18 Q But it was in the '80s. Right?

19 A It would have been in the '80s as opposed to after
20 1990.

21 Q So how many cases have you been contacted on by
22 attorneys representing a tobacco entity? I think
23 you mentioned two so far, this one and that first
24 one.

25 A Yes, sir.

1 Q Have there been any others?

2 A There's one more.

3 Q It came between the first one and this one. Is that
4 right?

5 A No, it has come more recent.

6 Q All right, have you been - is that - are you in that
7 as a consulting or as a testifying expert?

8 A At this point, I'm not sure.

9 Q What case is that?

10 A Well, I don't give that.

11 MR. BIERSTEKER: I would ask that the
12 witness not reveal that unless -- I frankly don't
13 know what case it is, Doug. I'm not trying to be
14 difficult, but if it's in a consulting capacity as
15 opposed to testifying capacity -- I know we can't
16 clearly establish that at the moment -- I don't want
17 to waive any privileges, and I would ask that that
18 not be divulged.

19 Q (By Mr. Holford) So that wasn't Jones-Day that
20 contacted you on this more recent one?

21 A I believe it was, but I'm not sure. I'm not sure
22 whether it was or not, and let me be honest.
23 Ethically I cannot give you the name of clients
24 because that ethically is something a psychologist
25 can't do under the rules of confidentiality unless I

1 have a court order to that effect.

2 Q Well, are you - when you say "clients" there, you're
3 speaking of attorneys representing tobacco
4 companies?

5 A No, I can certainly give the names of the attorneys
6 here, but what I'm saying is I can't tell the names
7 of the clients or the patients involved.

8 Q Did I ask you any names of patients?

9 A Yes, I thought you did. You were asking me the name
10 of the patient involved in this case.

11 Q Oh, oh ---

12 A And I can't give that.

13 Q Oh, then I misunderstood you. I didn't mean to ask
14 you that. I thought you were talking about a third
15 case where you were contacted by attorneys
16 representing a tobacco entity.

17 A That's these gentlemen, the Jones-Day is what I was
18 talking about.

19 Q On the third case?

20 A Yes.

21 Q So you had a first case back in the '80s in which
22 you were contacted by Jones-Day. Right?

23 A Well, there were several attorneys involving several
24 different firms, and I honestly don't remember who
25 they all were.

1 Q But Jones-Day was one of them?

2 A I believe that's true.

3 Q Then there were some other firms as well?

4 A Yes, sir.

5 Q All right, then next in time order came this case in
6 which you were contacted by Jones-Day?

7 A Yes, sir.

8 Q All right, then you're saying there's a third case
9 more recent ---

10 A Yes.

11 Q --- in which you were contacted by Jones-Day?

12 A Yes.

13 Q And you don't know whether you are consulting or
14 testifying in that case yet?

15 A At this point, I do not.

16 Q In this case, have you been contacted to be an
17 expert by any firms other than Jones-Day?

18 A There have been other attorneys present, and I am
19 not always sure what they represent. They're
20 introduced, but I am not that clear on who they
21 represent.

22 Q And you're speaking now of conferences you've had
23 with attorneys in this case?

24 A Yes, sir.

25 Q In the more recent case, were there firms other than

1 Jones-Day who contacted you?

2 A In this most recent one?

3 Q Yes, uh-huh.

4 A I don't honestly recall. As I said, I'm not sure
5 whether they're all in different parts of the firm
6 or if they are from different firms and represent
7 different entities.

8 Q It's hard to keep track of, isn't it?

9 A You attorneys are quite hard to keep track of, yes,
10 sir.

11 Q Well, I'm a sole practitioner, so you'll know, Dr.
12 Phelan.

13 A Okay, all right.

14 Q Now, do you recall when you were first contacted to
15 be an expert in this case?

16 A No, sir, I don't. I'm sure that I could get those
17 times for you, but I don't - off the top of my head,
18 I don't know when they were.

19 Q Are you thinking of sometime after this time in the
20 '80s when you were first contacted?

21 A Oh, yes, it's been fairly recently.

22 Q Can you tell me ---

23 A In the past year.

24 Q Last year?

25 A I would say in the past year.

1 Q Are you speaking of, like, 12 months before now?

2 A That's what I'm speaking of, in the past year.

3 Q I mean, are you saying that -- this is '94. So are
4 you saying sometime in '93, or are you saying
5 sometime in the last 12 months before now?

6 A The best of my recollection is sometime in the past
7 12 months, but I'm not going to swear to that date.
8 I need to look it up for you.

9 Q All right, what would you look in?

10 A Probably I'd go to my secretary and get the billing
11 records.

12 Q Do you have your billing records on this - for this
13 case here?

14 A No, I don't.

15 Q We'll get to that.

16 Now, how many - do you know how many
17 conferences you've had with attorneys in this case?

18 A I was going to say about three.

19 Q Okay, was the first one when you were first
20 contacted in this case?

21 A Yes, yes.

22 Q What was discussed then?

23 A Mostly, I think, asking questions about my
24 background and my area of expertise in substance
25 abuse and giving me some general idea of what was

1 involved in the case and my wanting to decide
2 whether or not I would take it.

3 Q Well, wasn't your involvement in this case similar
4 to your involvement in the case in the '80s?

5 A Well, that was, as I say, just as a consultant.
6 They were really sort of, quote, picking my brains
7 about the issues of addictions in general. They
8 understood that I had treated alcoholics and drug
9 addicts for a long time, and they wanted to sort of
10 pick my brain. That's what I was told.

11 Q So what I'm getting at is didn't Jones-Day already -
12 when they came to you for this case, didn't they
13 already know your background?

14 MR. BIERSTEKER: I object to the form of
15 the question, calls for speculation.

16 A I don't know. They were asking me a lot about my
17 background. I don't know what they knew or what
18 they didn't know. I was just answering questions
19 like I'm doing for you.

20 Q All right, so anything else in that first conference
21 that you can recall?

22 A Not that I recall.

23 Q And that was sometime in the past 12 months. Right?

24 A I believe, and I'm going to check that out for you.

25 Q That's your best memory. Right?

1 A I'm thinking it's in the past 12 months, yes.

2 Q Well, this is March 22nd. So you're talking about
3 sometime after March 22, 1993 roughly?

4 A I don't know - roughly, I think, I think. I'll have
5 to check.

6 Q So when was the second conference?

7 A I don't recall precise dates. It's been within the
8 last three months, I believe.

9 Q What was discussed there?

10 A First of all, how much they had sent me, what I had,
11 what I wanted to see, et cetera, and in general
12 discussed some of the general areas of the case and
13 what I had read.

14 Q So before the second conference, they had sent you
15 materials on the case?

16 A That is correct. When I had agreed to work with
17 them, they asked me to - if they could send me
18 materials, which they did.

19 Q Then after reviewing those materials, did you give
20 to them your opinions on this case?

21 A I talked over how I interpreted the stuff I had
22 read.

23 Q And was that sometime not long after your first
24 conference in the case?

25 A I don't really recall. I'm not going to -- I don't

1 want to mislead you. So I'm not going to give you
2 dates I don't remember.

3 Q But it was sometime between your first and second
4 conference in the case?

5 A That they sent it?

6 Q No, that you gave them your opinions or you
7 discussed your opinions or your reactions to the
8 materials.

9 A I honestly don't remember. I believe it was, but
10 I'm not sure.

11 Q So in the second conference then, you were just -
12 tell me again what you-all were discussing.

13 A Well, it may have been in that second conference
14 where I was discussing my reactions to what I had
15 read and some of the general specifics about the
16 case. I'm just not real sure.

17 Q Right, uh-huh. Okay, is that the extent of your
18 recall of that second conference?

19 A Yes, sir.

20 Q What about the third conference? When was that?

21 A Last - yesterday, late afternoon, early evening.

22 Q Let me go back. About how long did that first
23 conference last?

24 A I don't know. I really don't know. You are meaning
25 not the one way back when?

1 Q No, no, the first one in this case. I'm sorry.

2 A Generally my conferences are an hour to an hour and
3 a half. I don't know whether that is true or not.
4 That's in general what I schedule for conferences.

5 Q That is when you are undertaking to testify as an
6 expert in a case?

7 A I usually give anywhere from one to two hours. My
8 secretary will ask people how much time they want.
9 If they don't know, I usually schedule that much.
10 Sometimes they don't use it; sometimes they do.

11 Q So the second conference just within the last three
12 months - do you have any better recall of about how
13 long that was?

14 A I'm sure I did exactly the same thing. That's just
15 the way I schedule conferences with attorneys.

16 Q You haven't treated this case any differently in
17 time considerations than in your other cases where
18 you testified as an expert?

19 A No, I do exactly what I do all the time.

20 Q The conference yesterday - how long did that last?

21 A That certainly lasted, I think, about three hours.

22 Q So that was outside your usual. Right?

23 A That was outside the usual, yes.

24 Q What was the reason that it was outside the usual?

25 A Well, first of all, there was - we had to work out a

1 time when it was agreeable to everyone, and they had
2 invited me, if I wanted, to stay for dinner.

3 Q At their hotel, you mean?

4 A Yeah, uh-huh, at ---

5 Q So are you including the time you had for dinner in
6 that three hours?

7 A I'm including both discussion of the case and some
8 social time, yes, sir.

9 Q Okay, okay. So ---

10 A I ended up not eating dinner, but I ate a lot of
11 peanuts. I brought the wrong file. I had to go
12 back and get the right one. All that stuff went on.
13 I include all of that.

14 Q So did you discuss anything new that you hadn't
15 already discussed in the previous two conferences in
16 this conference yesterday?

17 A I don't think so. I think in general it was pretty
18 much the same.

19 Q Refreshing your thinking, I mean?

20 A Well, one is I was kind of getting to know Mr.
21 David, whom I really didn't know very well.

22 Q You had never met Joe David before?

23 A I had met him one time. I didn't really know him.

24 MR. DAVID: It's hard to believe, isn't
25 it?

1 A And so I was getting to know him, and he was getting
2 to know me and discussing the case.

3 Q (By Mr. Holford) Did you discuss anything else
4 about like what this deposition would be about or
5 like, I mean, or what plaintiffs' attorney would be
6 like or anything of that nature?

7 A Sure, discussed about the deposition, just wanted to
8 make sure that I understood what they were, and once
9 he found out I had been in depositions, we didn't go
10 into a great deal of detail about that, told me in
11 general about the kinds of things that he expected
12 to occur in a case like this.

13 Q Are you talking about what Mr. David told you?

14 A Yes, yes, sir.

15 Q Did he tell you that the kind of arguing you've seen
16 here today would go on?

17 A I don't recall whether he said that. I know he
18 said, "I may object to things" and so on and so
19 forth. I don't think he talked about arguing.

20 MR. DAVID: I referred to it as colloquy
21 between and among counsel.

22 (Phelan Exhibit No. 2 marked for
23 identification.

24 Q (By Mr. Holford) Now, I show you what's been marked
25 as Phelan Exhibit 2. Do you recognize that?

1 A Yes, sir.

2 Q You've seen it before?

3 A I got a fax of this. I didn't get it until
4 yesterday because it was sent late on Friday, and I
5 guess I had already left, and so I didn't get the
6 fax until Monday.

7 Q Do you see the - did you see the subpoena duces
8 tecum starting on the second page?

9 A Yes, sir.

10 Q Have you brought what that asks for?

11 A I brought all the documents and stuff that I had,
12 yes, sir.

13 MR. DAVID: I think, Doug, in fairness
14 on No. 1, we're going have to supplement with
15 whatever documents might exist in terms of billing.
16 That's my error. We'll supplement it as soon as
17 possible.

18 MR. HOLFORD: Okay, that's fine.

19 THE WITNESS: I'll fax it to you when I
20 get back to the office.

21 MR. HOLFORD: Is that all right, Mr.
22 David, if she does that?

23 MR. DAVID: Sure. I think I read it to
24 be - to - as I read it, I read it to be some actual
25 written agreement as opposed to billing records. As

1 I read it sitting here today, I think it could
2 fairly be read to include whatever bills we have
3 been sent, and if that's what you meant by it ---

4 MR. HOLFORD: Well, it's both.

5 Q (By Mr. Holford) Do you have an engagement
6 agreement with Jones-Day here?

7 A A contract?

8 Q Yes.

9 A No, sir.

10 Q Okay, what you're referring to are your copies of
11 your bills to them for your services in this case.
12 Right?

13 A For any time that they used, yes, sir.

14 MR. HOLFORD: Is it all right if she
15 faxes that to me?

16 MR. DAVID: Well, I think we should see
17 them first, but I don't have any - I don't think
18 we're going to have any objection to it. So we will
19 fax them to you.

20 THE WITNESS: Okay, I'll fax them to
21 him. He can fax them to you. I'll do that today.

22 MR. HOLFORD: Okay, all right.

23 Q (By Mr. Holford) Now, we have your most recent CV.
24 Right?

25 A Yes, sir.

1 Q No. 2. Now, No. 3 - have you published any works
2 that concern cigarette smoking and any disease or
3 addiction?

4 A As I say, I have some publications, but I don't have
5 copies of them.

6 Q You are referring to things in your CV?

7 A Yes, yes, sir.

8 Q Well, I thought you told me that the things that are
9 described in your CV do not expressly discuss
10 tobacco smoking?

11 A What you say - or addiction. I thought you meant
12 any addiction.

13 Q No, I'm sorry. I think you're probably right, but
14 let's just talk about cigarette smoking and nicotine
15 addiction.

16 A Oh, I took it to mean any disease or addiction, and
17 I ---

18 Q Okay.

19 A I don't have copies of things I've written is all
20 I'm saying.

21 Q And you never wrote anything regarding nicotine
22 addiction because you don't believe it exists.
23 Right?

24 A I don't believe it's addictive, right.

25 Q Now, what about No. 4, things that support your

1 opinions that you intend to testify on?

2 MR. DAVID: We submitted an objection
3 with respect to No. 4.

4 MR. HOLFORD: I think you said -- I
5 mean, I wanted to see if I watermarked it too much.
6 I think I saw on the second page you said you were
7 going to produce anything that ---

8 MR. DAVID: Directly supports the
9 opinions.

10 MR. HOLFORD: Yes, or something.

11 A See, I mean, I've got 25 years of stuff that I've
12 read, looked at and heard and all of which of course
13 supports and affects my beliefs and my opinions,
14 but, you know, I couldn't collect 25 years of stuff.
15 I wouldn't know where to begin.

16 Q Do you have anything that says that nicotine and
17 cigarette smoke is not addicting?

18 A I don't know.

19 MR. RILEY: Object to the form of the
20 question.

21 Q (By Mr. Holford) I mean, anything that you can
22 think of now. Do you have any reference at all that
23 says that?

24 A Oh, I've read lots of things that say that. I don't
25 have - I don't know any specific articles or any

1 specific books or anything that say that, but
2 certainly I've read that.

3 Q Well, I'm not talking about in the past, you know,
4 hundred years or anything. I'm saying ---

5 A I haven't lived that long.

6 Q Do you have any -- well, I know, but you have
7 resources from that far back.

8 MR. DAVID: You've billed enough hours.
9 No.

10 Q (By Mr. Holford) Do you have any current authority
11 that says that nicotine -- all right, let's just say
12 do you have any reference published in the last ten
13 years that says nicotine is not addicting?

14 A I don't know. I honestly don't know.

15 Q As you sit there, you can't recall any?

16 A I don't know. I've read it. I don't know whether
17 it's in the last ten years, the last five years. I
18 don't know where or who published it. You know, I
19 just don't know.

20 Q So you can't state on the record here any authority
21 from any time that states that nicotine and
22 cigarette smoke is not addicting?

23 MR. DAVID: That misstates the
24 testimony. I object to the form of the question.
25 She said she has read it.

1 A I've read it. I just can't tell you where, when or,
2 you know, what publication it was.

3 Q So it could have been from something written in
4 1910, in other words. Right?

5 A No, no, I don't go back that far except with Freud.
6 No, sir, it would have been certainly within the
7 time that I've been involved in this field, which is
8 1970 - no, about 1968 or '7, yeah, that I've been
9 involved in this field. So clearly it's since then.
10 I would have had no reason to have read those kind
11 of articles prior to that.

12 Q Are you going to be able to -- let's see. First of
13 all, if this case goes to trial, are you going to
14 testify live?

15 A If I'm asked to.

16 Q Haven't you been?

17 A As far as I know, I will, but I don't know. I mean,
18 if I'm asked to, I will. I'm assuming I will.

19 Q Well, that's why I said if the case actually goes to
20 trial ---

21 A Yes, sir.

22 Q --- and plaintiffs actually present their case and
23 it's defendants' turn to put on witnesses, do you
24 believe you'll be there?

25 A In my opinion ---

1 MR. DAVID: Asked and answered, you
2 know.

3 A In my opinion, I will. I believe I will be.

4 Q Now, are you going to be able at that time to bring
5 any reference that says that nicotine and cigarette
6 smoke is not addicting?

7 MR. RILEY: Object to the form of the
8 question.

9 A I don't know. I don't know.

10 Q (By Mr. Holford) Now, you're saying right now that
11 you've read that somewhere, but you can't think of
12 one single author, treatise, anything - any way at
13 all to point to any one statement to that effect?

14 A At this point in time, that's correct, sir.

15 Q Okay. Now, about how much have you billed the
16 defendants in this case?

17 A Haven't the foggiest. I bill them by the hour, and
18 so however many hours I've spent with them, I billed
19 them at my regular fee for those regular hours.

20 Q I'll see that in your bills?

21 A Absolutely.

22 Q But on Item 4, did you bring anything here today
23 that, in your opinion, supports your opinions in
24 this case?

25 A I don't even know where to begin. When I read it, I

1 thought I don't know where to begin. I've got 25,
2 almost 30 years' worth of stuff in my head, from
3 experience, from things I've read. I didn't know
4 how to bring all that except me.

5 Q That's why I asked you if there's anything that you
6 have other than your general reading and experience
7 that supports your opinions in this case.

8 A I brought what's all up here. That's the best I can
9 do for you today.

10 Q Well, let's go to No. 11 -- I'm sorry -- No. 12,
11 anything you've received from any defendant or
12 defendants' counsel in this case?

13 A That I brought.

14 Q What is that?

15 A Those are depositions from the Allgood case.

16 MR. HOLFORD: Mr. David, can you ---

17 MR. DAVID: Sure.

18 Q (By Mr. Holford) What depositions are those?

19 A Those are Bonnie Allgood's Volumes 1 and 2, and it's
20 Marcus Allgood's, and it's Samuel Allgood's
21 deposition from a workers comp case.

22 Q You didn't get Malcolm Allgood?

23 A No, sir, I didn't.

24 Q Do you know of any particular reason for that?

25 A No, sir.

1 Q And so those three depositions - those three
2 persons' depositions, four volumes, are the only
3 depositions from this case that you've received?

4 A Those are all I have.

5 Q Have you received any summaries or deposition
6 summaries or notes on them?

7 A No, sir.

8 Q Are those depositions you've just named all the
9 tangible items that you've received from defendants
10 in this case?

11 A That is correct.

12 Q Do those depositions of Bonnie Allgood and Marcus
13 Allgood and the workmen's comp deposition of Samuel
14 Allgood - do they support your opinions in this
15 case?

16 A Yes, sir, some of the material from them I've used
17 to support my opinions.

18 Q So those depositions - those depositions are all you
19 have produced here today that support your opinions
20 in this case. Right?

21 MR. RILEY: Object to the form of the
22 question.

23 A These are produced here because of No. 12. You had
24 asked me to bring in all the documents I had gotten
25 from people about the case, and that's it.

1 Q Yes. I understand that.

2 A Okay, that's why they're here.

3 Q But you also say that they fit Paragraph 4 because
4 they do support your opinions in this case?

5 MR. DAVID: Directly, subject to the
6 objection.

7 Q (By Mr. Holford) Is that right?

8 A Certainly the materials in them - a lot of the
9 materials in them do support my opinions about a lot
10 of things in this case.

11 Q In this case?

12 A Yes, okay.

13 Q So then I'm asking, other than these depositions of
14 Bonnie Allgood, Marcus Allgood and Samuel Allgood,
15 you don't have anything else here today that support
16 your opinions in this case?

17 MR. RILEY: Object to the form of the
18 question.

19 A Except 20 some-odd years of knowledge of working
20 with addictions.

21 Q (By Mr. Holford) You don't have any other tangible
22 item here today that supports your opinions in this
23 case. Right?

24 A I hope this brain is tangible, yes, sir, but other
25 than that, that's all I brought.

1 Q All right, thank you. Now, how about No. 6? Do you
2 have -- well, let me back up. On No. 12, those four
3 volumes of depositions are the only things you have
4 in your possession, custody or control that were -
5 that you received from defendants. Right?

6 A That's correct.

7 Q Again, in Paragraph 4, your brain and those four
8 depositions are all that you have in your
9 possession, custody or control that support the
10 opinions you have in this case. Right?

11 MR. DAVID: I mean, I'm going to object
12 to the form of the question.

13 Q (By Mr. Holford) Well, that directly support your
14 opinions in this case.

15 MR. DAVID: I know there was an attempt
16 to inject some humor in there, but her brain plus
17 whatever knowledge it contains and her recollections
18 of what she has read over 25 years.

19 MR. HOLFORD: But that's not tangible -
20 experience. Okay?

21 Q (By Mr. Holford) Are the depositions and what you
22 carry in your mind being tangible - are those the
23 only tangible items that you have in your
24 possession, custody or control which support the
25 opinions to which you intend to testify in this

1 case?

2 A Well, see, that's difficult for me to answer. Let
3 me explain. I may have books. I got tons of books.
4 I may have some books still floating around, some
5 articles still floating around that are certainly
6 pertinent to the way I think about addictions in
7 general or any kind of substance abuse, et cetera.
8 Those I've read over the past 20, 25, 30 years, but
9 I would have to go through every article. I would
10 have to go through every book, and I have extensive
11 books like you attorneys do on psychological data to
12 even dig it out, and it might take me ten years to
13 do it then. If I pull a sentence from here and a
14 word from here, a paragraph from here, it would be
15 very difficult to do.

16 What I've done is try to synthesize all that
17 I've learned, all I've been taught, all I've seen,
18 all I've dealt with and all I've read up here, and
19 it now lodges in whatever area there is that helps
20 me form my opinions.

21 Q Have you read any surgeon general's reports?

22 A I have seen excerpts of surgeon general's reports.
23 I don't think I've ever read the full document.

24 Q Excerpts made by who?

25 A Newspapers, articles in professional journals, et

1 cetera.

2 Q Which surgeon general's reports have you seen
3 anything from?

4 A Off and on through the years probably since the
5 '50s.

6 Q All of them?

7 A I've seen excerpts from it because it would all be
8 printed in the paper. You know, excerpts from all
9 the attorney - I mean, the surgeon general's reports
10 would be then put at least in the New York Times. I
11 would read them.

12 Q You mean from the '60s. They started, I think, in
13 '64.

14 A I was going to say from wherever they started, they
15 kept coming out in the newspaper, and you'd read
16 them.

17 Q Now, does that include the recent ones, the '86,
18 '87, '88, '89?

19 A I have certainly read excerpts from those. I have
20 never read a complete report. I haven't ordered and
21 received and read a complete report.

22 Q Well, did the excerpts that you read from those
23 reports appear to be the primary points of those
24 reports?

25 A That was my understanding, that they synthesized it.

1 Q Do you have any books that you primarily rely on in
2 your daily practice?

3 A It depends on what areas we're talking about because
4 I deal with lots of areas, and so there are all
5 kinds -- I may go back to a reference on family
6 systems work for a particular case. I may go back
7 to a reference on working with narcissistic
8 personalities, depending on the case. So there are
9 books I go to and get information from or refresh my
10 memory. There are notes I go to. There are books I
11 use all the time. I go to the library and get -
12 reread articles, you know.

13 Q Have you ever treated a patient for the purpose of
14 achieving smoking cessation?

15 A No, I do not have a practice that includes treating
16 people specifically for ceasing to smoke, although I
17 have had patients who have worked on stopping
18 smoking.

19 Q You mean with somebody else?

20 A No.

21 Q By themselves?

22 A No, with me, but that was not the reason they came
23 into therapy.

24 Q Well, I'm not asking why they presented. I'm asking
25 as long as they were your patient, have you ever

1 treated a patient for purposes of achieving smoking
2 cessation?

3 A I've treated people who wanted to stop smoking and
4 tried to help them with that, yes.

5 Q Is that different from treating them for purposes of
6 achieving smoking cessation?

7 A Absolutely. I was not treating them for the purpose
8 of stopping smoking. I was treating them for other
9 issues, and in the process of therapy, it also was
10 recognized by the patient that they wanted to stop
11 smoking, and we dealt with that in a therapeutic
12 process, but they didn't come into therapy for that.
13 That was not the goal of therapy, and that's not the
14 reason that we terminated therapy. That was one of
15 those things that comes up during the therapeutic
16 process.

17 Q In your treatment of any patient, have you ever
18 achieved smoking cessation?

19 A Certainly people have stopped smoking. I didn't
20 achieve it. They did. They stopped smoking.

21 Q So your treatment of a patient itself has never
22 caused smoking cessation. Is that right?

23 A I don't believe ---

24 MR. RILEY: Object to the form of the
25 question.

1 A I don't believe you can stop somebody else's
2 behavior. They are responsible and have to stop
3 that behavior. You can help them with finding ways
4 to achieve the goals they have, but you are not the
5 one who does it. I mean, it's not like going in and
6 taking out an appendix and being able to hold it up
7 and see it. This is a decision that the person has
8 to make. All I can do as their therapist is to help
9 and support them, give them some guidelines, work
10 with them on some techniques for doing and achieving
11 whatever it is they want.

12 Q Well, so what have you done with any patient
13 regarding the cessation of their smoking?

14 A Well, we certainly have talked about some of the
15 issues involved with their cigarette smoking or
16 their tobacco smoking of any kind because in a
17 couple of cases it's been cigars. We have talked
18 about ways that they could get help. Sometimes I've
19 referred them to Nicorette gum if they're having
20 trouble. Sometimes I've referred them to the new
21 patches that people are wearing and have had success
22 with those who really want to quit, no success with
23 those who really don't want to quit, and sometimes
24 people have simply been able to recognize they want
25 to quit and do it.

1 Q In your presence?

2 A Have said they're going to stop. I mean, I don't go
3 home with them.

4 Q You don't know anything but what happens in your
5 office or what they tell you?

6 A I have to believe my patients.

7 Q But it's true, isn't it? You don't know anything
8 but what happens in your office or what they tell
9 you?

10 A Well, no, that is not true because I do know
11 sometimes from the spouses who come in and say,
12 "Thank God she quit," or, "Thank God he quit. I'm
13 so glad those cigars are out of the house." So
14 that's not always true.

15 Sometimes I do have other people verifying
16 that that is true, but they have no reason to lie to
17 me about quitting because it's not - I'm not going
18 to judge them whether they quit or don't quit.

19 Q How many patients have you had that through dealing
20 with you have ceased smoking?

21 A I have no idea. I really don't keep track of that.
22 You know, you work with alcoholics. You work with
23 almost a hundred percent smoke, and of those, a lot
24 of them, after they gave up - decided to give up the
25 alcohol and get themselves straight, they also

1 decided to stop smoking.

2 (Discussion off the record.

3 Q (By Mr. Holford) Look at No. 14, Dr. Phelan.
4 Records of each and every patient or client whom -
5 who you contend you have caused to quit smoking.
6 What's your response to that?

7 MR. BIERSTEKER: Did you see the
8 objection to that, Mr. Holford?

9 A I can't. Under all the ethical considerations there
10 are for psychologists, let me tell you the board
11 would haul me in and really clean me up if I did any
12 such thing. That's the breach of confidentiality.

13 MR. HOLFORD: And that's what your
14 objection says?

15 MR. BIERSTEKER: Yes, confidential,
16 privileged records.

17 A I could lose my license for that.

18 Q (By Mr. Holford) Well, on these records, Dr.
19 Phelan, if you or Jones-Day did - blanked out the
20 patient names, there would no longer be any
21 confidentiality violated in my looking at them,
22 would there?

23 MR. ALLEN: Mr. Holford, in the Federal
24 Rules of Evidence -- and sometimes to help you, if
25 you and I disagree, I'll let you know, but the rule

1 says that not only is the patient's identity
2 privileged but all statements made, the diagnosis
3 and treatment. Simply by deleting the name does not
4 relieve the problem of privilege.

5 MR. RILEY: I also want to object to
6 these questions because there's no foundation that's
7 been laid for the questions. Go ahead.

8 MR. HOLFORD: Oh, all right.

9 MR. BIERSTEKER: I object to the
10 question as overbroad.

11 Q (By Mr. Holford) Dr. Phelan, I could know the
12 number of any such patients whom you contend you've
13 caused to stop smoking just by knowing how many
14 files you have. Right?

15 MR. BIERSTEKER: Object to the form of
16 the question.

17 A I beg your pardon? You could know how many people I
18 helped stop smoking by knowing the number of files I
19 have?

20 Q The number of patients - the number of, yes, patient
21 files or records that you have ---

22 A Well ---

23 Q --- that fit that category.

24 MR. ALLEN: Mr. Holford, if it would be
25 appropriate, I also would join in the objection or

1 state the objection this assumes facts not in
2 evidence based upon prior testimony.

3 MR. RILEY: It's contrary to the
4 testimony.

5 MR. HOLFORD: Okay.

6 A First of all, it would be really very hard because
7 after five years I'm allowed to get rid of records.
8 Because I have boxes after boxes, like I'm sure all
9 of you attorneys have, of case records that are -
10 have been terminated, I get rid of records when
11 they're five years old. I destroy them. I shred
12 them.

13 So since I've been licensed since 1975 to
14 practice independently in the state of Texas, there
15 are a lot of records I don't have. I just don't
16 have them anymore.

17 I don't keep track of records by the type of
18 illness they have or the problems I work on or the
19 goals for therapy. I keep track of records only by
20 client/patient names. That's all. So I can't give
21 you either a number of how many, nor could I give
22 you -- and I can't give - all I know is that I
23 cannot give any kind of client records without their
24 permission without jeopardizing my own license.

25 Q (By Mr. Holford) So you're not going to produce

1 anything in response to Paragraph 14 of Exhibit 2.

2 Right?

3 A I can't.

4 Q Now, so let me understand. From what you can recall
5 that what you've done with any patients of yours who
6 are there for something else who also say they want
7 to stop smoking - what you've done is refer them for
8 Nicorette gum -- when you say "refer them," who do
9 you refer them to?

10 A Well, they have to get that from a physician. It
11 has to have a prescription for the Nicorette patches
12 and gum.

13 Q So you - anyone that you refer for Nicorette gum you
14 refer to a physician for that physician's care on
15 that. Right?

16 A I do ---

17 MR. BIERSTEKER: I object to the form of
18 the question.

19 A You have to do one of two things. I say, "Ask your
20 physician to get you some Nicorette gum or some
21 patches." If they don't have a physician, I may
22 give them the names of four or five physicians that
23 I know, but most have their own physicians. So what
24 I say is, "Just go back and ask your family doctor
25 for the prescriptions for these two things if you

1 want to try them."

2 Q And with your patients who, again, have come in for
3 some other problem like alcohol or something who
4 raised to you wanting to stop smoking, you - you
5 either refer them to a physician for Nicorette gum
6 or you refer them to a physician for patches - the
7 nicotine patches. Is that right?

8 MR. BIERSTEKER: Object to the form of
9 the question. It mischaracterizes the prior
10 testimony.

11 A Now, I don't do only that. Of course even though I
12 do do that in some cases, we're going to deal with
13 the issue of whatever it is that they want to work
14 on about smoking. If that's an issue they want to
15 work on, we're going to deal with that in therapy.

16 Q All right, how do you do that? Well, let me go back
17 a minute.

18 In any case in which you have not referred
19 the patient for Nicorette gum or nicotine patches,
20 what have you done instead?

21 A There are some times where you can simply use some
22 relaxation training. You can use some imaging and
23 visualization with people to help them overcome
24 their desire to smoke, help them - support that part
25 of them that wants to quit. You can do a number of

1 things with people, any of which may or may not
2 work. A lot of them are simply behavioral kind of
3 techniques.

4 Q Now, does that then describe everything you've done
5 with the people who have said, "I want to stop
6 smoking"?

7 A I don't know. Those are the ones that come to mind
8 right now. I hadn't really thought of this.

9 Q All right, how many patients have you had that
10 you've helped with their smoking?

11 A I don't know.

12 Q Could be as few as ten, or it could be as many as a
13 hundred?

14 A I certainly think it's probably more than ten, but I
15 don't have any idea how many. I just don't keep
16 track of patients by terms of the goals of therapy.

17 Q You think it's been more than 20?

18 A I don't know.

19 Q More than 30?

20 A I don't know.

21 Q Less than 30?

22 A I don't know.

23 Q Do you know how many of your patients that have
24 asked you for help with their smoking that have
25 stopped smoking while under your care?

1 A I don't know how many, no, sir. I just don't keep
2 track of them like that.

3 Q More than ten?

4 A I don't know.

5 Q Less than ten?

6 A Honestly I don't know.

7 Q All right. Now, I don't know if there's any more
8 here. Yes, No. 7 -- you may have answered this, but
9 it's all scientific or medical articles or works
10 which discuss cigarette smoking and addiction and,
11 No. 8, cigarette smoking and any disease. Do you
12 have any books in your office which you more
13 frequently refer to that discuss cigarette smoking?

14 MR. DAVID: I object to the form of the
15 question. It assumes facts not in evidence. I also
16 wanted to point out that there is an objection
17 interposed to this particular request.

18 Q (By Mr. Holford) Well, let me make it independent
19 of the subpoena, Dr. Phelan. Do you have some books
20 in your office that - regarding substance addiction
21 or substance abuse?

22 A Substance abuse.

23 Q Yes, that you more often refer to?

24 A At this point, I don't refer to a lot of them unless
25 some new things have come out and I read it because

1 I've been doing it so long that I already have
2 retained most of it up here that I use. I don't
3 keep a lot of books in my office at all. I keep
4 loads of books at home because I don't have room in
5 my office. I have a small office, and I don't have
6 room for those books.

7 There aren't any that I go to all the time
8 that I use for references. There just aren't at
9 this point. When new ones come along, I buy them
10 and read them.

11 Q I mean to cover your office and your home of course,
12 anything you have, you understand?

13 A Well, that's why I wanted to clarify.

14 Q Well, let's talk about anything you've received in
15 the last five years. Have any of those discussed
16 cigarette smoking?

17 A I don't know. They may have. You have no idea how
18 many journals and how many books I buy.

19 Q Well, I'm speaking specifically of books right now.

20 A Okay. Well, I honestly don't know. I go to these
21 conferences and spend \$300 on books because I love
22 to read, and I like to keep up with what's happening
23 in my field, and I just don't know how many I buy on
24 any one subject.

25 Q Well, let's say any of the books you've read in the

1 last three years - have any of them discussed
2 cigarette smoking?

3 A They may have. I just don't remember right off the
4 bat.

5 Q You can't recall?

6 A No, sir.

7 Q Can you remember when the last time - approximately
8 when the last time you read anything about cigarette
9 smoking was?

10 A Oh, I think ---

11 MR. RILEY: I object to the form of the
12 question.

13 A I think I've probably read something the last week
14 on cigarette smoking.

15 Q What about cigarette smoking did that discuss?

16 A It had to do with litigation like this.

17 Q Do you remember the name of that book?

18 A No, sir.

19 Q Do you remember the author?

20 A No, sir.

21 Q It was a book, not an article?

22 A No, I think it was an article. I didn't know we
23 were just talking about books.

24 Q Well, maybe not. So do you remember where the
25 article was published or in what it was published?

1 A I think it was the New York Times, but I won't swear
2 to it.

3 Q Do you recall the gist of this article?

4 A It was interviewing a great many people within the
5 cigarette industry about this whole issue of smoking
6 and litigation and the feelings about what
7 cigarettes do and don't do, et cetera. It was a
8 very extensive article, but I don't remember who
9 wrote it.

10 Q These were executives of tobacco companies?

11 A And attorneys, yes, sir.

12 Q Attorneys for tobacco companies?

13 A Yes, sir.

14 Q They were all pretty uniformly saying that
15 cigarettes do not cause disease in humans. Right?

16 MR. RILEY: Object to the form of the
17 question.

18 A That wasn't the - that wasn't the way the article
19 was written. It wasn't asking whether they believe
20 it or don't believe it. It was more about the
21 relationship of the whole tobacco industry in the
22 country. It was - it was a much more broader kind
23 of an article. It was very well done and very
24 interesting to me.

25 Q (By Mr. Holford) Do you read the New York Times

1 regularly?

2 A I sure do.

3 Q Do you remember the article in the New York Times
4 maybe in the last year called Smoking Mirrors?

5 A That rings a bell, but I can't remember what exactly
6 specifically it was about.

7 Q I think a lady named Friedman was one author?

8 A I don't remember authors. I'm sorry, but that
9 vaguely rings a bell. So I bet I did read it.

10 Q That talked about how the tobacco industry through
11 the Council for Tobacco Research and the Tobacco
12 Institute have been misleading the public about
13 smoking for so many years. Do you recall that?

14 MR. BIERSTEKER: I object to the form of
15 the question.

16 A I just remember reading the article. I don't
17 remember the specifics about it, but I - because the
18 name rings a bell, I feel I did read it.

19 Q (By Mr. Holford) All right, do you remember having
20 any reaction to that article?

21 A Oh, I find all these extremely useful and
22 interesting.

23 Q Do you generally believe what you read in the New
24 York Times?

25 A Oh, I don't ---

1 MR. RILEY: Object to the form.

2 A I don't believe everything I read anywhere.

3 Q Well, do you have any memory of not believing what
4 you read in that article, Smoking Mirrors?

5 A I don't remember the total - the article. So I
6 can't tell you whether I do or don't. I can't
7 remember the total article. So I don't know whether
8 there was anything in it ---

9 MR. BIERSTEKER: We have testimony, "I
10 think I read it." Now you are saying, "Do you agree
11 with everything that it said?" That's really
12 unfair. If you want to ask her about specific
13 things in a specific article, go ahead and show her
14 the article and ask her what her opinions are about
15 those specifics things.

16 THE WITNESS: I would be glad to do
17 that. I would have to refresh my memory.

18 Q (By Mr. Holford) I am interested, Dr. Phelan, in
19 your feeling. I have heard this thrown around here,
20 but do you feel that I've been unfair to you in my
21 questioning?

22 A You're doing your job. I expect you to be whatever
23 you need to be in order to do your job, and it's
24 okay. I understand.

25 Q Well, I really would like to know if you think I've

1 been unfair in any of my questions to you.

2 A It doesn't matter whether I think that or not.

3 You're doing the job you need to do, and I respect
4 you for that. I will work with you with that.

5 Q Are you saying you don't have any thought on that?

6 A I don't have any thought on that. I don't take it
7 personally, sir.

8 Q All right, do you remember any other articles
9 concerning smoking that you read?

10 A No, and I am sure ---

11 MR. RILEY: I object to the form of the
12 question.

13 A I'm sure I've read scads of them. I do read New
14 York Times. I do read -- let's see -- U.S. World
15 News, Newsweek, Time. I got a bunch of scientific
16 journals that I get every month.

17 Q Do you believe that - do you believe that smoking
18 causes lung cancer for instance?

19 MR. BIERSTEKER: Object to the form.

20 A I believe that smoking puts you at risk for a number
21 of illnesses, and that's one of them.

22 Q (By Mr. Holford) You adopt the risk factor
23 terminology?

24 A Absolutely. I think it puts you at risk for it,
25 just like ten dozen other things in this country,

1 you bet.

2 Q Do you think -- oh, you think that there are other
3 things in this country that are as risky to your
4 health as cigarette smoking?

5 A More.

6 Q Like what?

7 A I think alcohol is far more risky to your health
8 than anything. I think pollutants in the air are
9 far more risky than anything. I think some of the
10 additives in our food are very risky.

11 Q More so than cigarette smoking?

12 A I certainly think they equal it.

13 Q Now, let's talk about mortality, that is, causing
14 death. Okay, what things in this society do you
15 think are a greater risk for causing death than
16 cigarette smoking?

17 A Alcohol.

18 MR. BIERSTEKER: Object to the form.

19 Q And things in our food?

20 A I think certainly - I think that the things that are
21 damaging us the most around substances - foreign
22 substances in our bodies are probably the pollutants
23 that come out of our automobiles and our factories
24 and our chemical plants.

25 Q Well, I'm talking about killing you now.

1 A I think they kill you.

2 Q As much as cigarette smoking?

3 A You bet I do.

4 Q Okay, now ---

5 A If you're living in those areas, sure. If you live
6 in Montana and you've got wide-open sky, no.

7 Q But you're not a medical doctor. So this is just
8 your personal opinion. Right?

9 A That's personal opinion from reading stuff, just
10 like everything else.

11 Q Now, still you've read a lot about smoking in the
12 last ten years. Right?

13 MR. RILEY: Object to the form of the
14 question.

15 MR. BIERSTEKER: Object to the form of
16 the question.

17 A I don't know what "a lot" is, but I have read about
18 it.

19 Q (By Mr. Holford) Weren't those your words?

20 A I've certainly read a lot of articles, and some of
21 those, a lot of those, I don't know.

22 Q Were about smoking. Right?

23 A Yeah.

24 Q But it's your testimony that you have not -- I'm
25 going to take that back. Let me just ask you

1 purely, okay, how many or what quantity of articles
2 or books or other writings have you seen that say
3 that nicotine and cigarette smoking is addicting?

4 A I don't know. I've certainly seen some that say
5 that. I don't know how many.

6 Q Well, how many that have said that nicotine in
7 cigarette smoke is addicting have you seen in
8 comparison to any you've seen that say nicotine and
9 cigarette smoke is not addicting?

10 A I don't know. I honestly don't keep track of
11 numbers like that. I just don't do it.

12 Q Well, what is the basis for your opinion that
13 nicotine is not addicting?

14 A I think it's a habit. I believe that it is a habit
15 and that you have free will to stop that habit if
16 you want to. One is personal experience, and the
17 other is having worked with people who are addicted
18 to all kinds of things for the past 25 years.

19 Q Like chocolate?

20 A Like chocolate. I work in an eating disorder
21 clinic, you bet.

22 Q Like sugar?

23 A Like sugar.

24 Q Now, Dr. Phelan ---

25 A By the way, if you are a diabetic, sugar can kill

1 you, too. I think all of these things in excess put
2 us at risk for certain things. So we have to decide
3 as intelligent human beings whether or not we're
4 going to do that.

5 Q Now, Dr. Phelan, look at No. 9. Do you have any
6 indexes of anything you've read in this case, like
7 these depositions?

8 A No, sir, I don't keep indices.

9 Q You don't make notes either. Right?

10 A Well, you know, I may have jotted things down here.
11 Sometimes I make notes; sometimes I don't.

12 Q You may have made some notes in the depositions?

13 A May have.

14 MR. HOLFORD: I want to end up as
15 Exhibit 2-A any of the pages in those depositions
16 that Dr. Phelan has made notes on. Is that ---

17 MR. BIERSTEKER: You can go ahead and go
18 through it and identify them, and then I'll make
19 copies of the pages you identify.

20 MR. HOLFORD: All right, I will do that
21 as soon as we finish the deposition. That will be
22 Exhibit 2-A.

23 MR. DAVID: That will be fine.

24 (Phelan Exhibit No. 2-A reserved
25 for identification.

1 Q (By Mr. Holford) No. 10, Dr. Phelan, any summaries
2 in whatever form that you provided to defendants -
3 have you given anything written to defendants?

4 A Nobody asked me to write a report. I haven't
5 written anything.

6 Q Okay, so that covers No. 11, anything you provided
7 to defendants. There's nothing but the bills.
8 Right?

9 A That's it.

10 Q Have you received any items from any consultants,
11 non - No. 13, any consultants, nontestifying experts
12 or testifying experts in this case?

13 A You mean have people - other experts sent stuff to
14 me for this case specifically?

15 Q Well, not necessarily sent directly to you, but have
16 you received anything -- I think you've said that.
17 You've said you've only received ---

18 A This is all I have gotten, right, sir, and that's
19 what I brought.

20 Q Whether from any plaintiffs' experts or any other
21 defendants' experts ---

22 A Oh, I see what you mean.

23 Q --- you haven't received anything that came from -
24 like their depositions or notes or anything?

25 A No, sir, I've only gotten this.

1 Q Now, No. 14 - you're standing on the
2 confidentiality, and you're refusing to produce
3 anything with regard to No. 14. Right?

4 A Absolutely.

5 Q No. 15 - anything relating to Samuel Allgood, well,
6 that's the depositions here?

7 A Uh-huh, yes, sir.

8 Q Now, as you sit there now, Dr. Phelan, have you seen
9 and reviewed everything that you consider necessary
10 to support the opinions you expect to state at the
11 trial of this case?

12 A Yes, sir.

13 MR. BIERSTEKER: Are you getting hungry?

14 THE WITNESS: I'm getting hungry.

15 MR. HOLFORD: Yeah. I won't have - I
16 probably have less than an hour.

17 MR. BIERSTEKER: Well, then we should
18 break. If it was going to be five minutes, I'd say
19 let's finish.

20 MR. HOLFORD: Let's go on break.

21 (Recess - noon.

22 * * * * *

23 AFTERNOON SESSION: 1:25 P.M.

24 * * * * *

25 Q (By Mr. Holford) Now, Dr. Phelan, over the lunch, I

1 went through your depositions - copies -- I'm sorry
2 -- of the depositions of Bonnie, Marcus and Samuel
3 Allgood looking for places that you had made any
4 notes or underlinings. I really didn't see any
5 notes other than an asterisk here or there.

6 A I remembered making a couple of notes, but I don't
7 remember where they were at this point.

8 Q You mean whether they were in these depositions?

9 A No, no, they were in these depositions, but I just
10 don't remember whereabouts in them. I just remember
11 writing something in a margin.

12 Q Well, is it true that anywhere in these depositions
13 that you either underlined or made a note or any
14 mark you turned down the page?

15 A No, sir.

16 Q The corner of the page?

17 A Not always.

18 Q Well, I went through them and did find relatively
19 few pages with some underlining on them. I turned
20 down the corner. I'm not sure how we're going to -
21 for you to verify whether all the pages with your
22 marks on them now have the corners turned down is -
23 that would take a while, wouldn't it? It took me
24 over the lunch period.

25 A I'm sorry.

1 Q That's fine.

2 A I didn't even think about that. I know that often I
3 turn the corners down but not always.

4 Q Do you believe that you turned the corners down,
5 first of all, in almost all of the places where you
6 marked on them?

7 A I think, in the majority of the places. I don't
8 know that I'd say almost all, but in the majority of
9 places where I've underlined, I probably have also
10 turned down the corner.

11 Q Would it be true that in the places where you
12 underlined or made some mark that you considered
13 important that you turned down the page there?

14 MR. BIERSTEKER: Objection to the form.
15 Could you try that again?

16 A Try that one again.

17 Q (By Mr. Holford) Well, was there any determining
18 factor that caused you to turn down the corner where
19 you did?

20 A Usually I just try to turn down corners when I'm
21 underlining. I don't always remember to do that.
22 That's simply to tell me where I've underlined, but
23 sometimes I just don't remember to turn down the
24 corner.

25 Q Well, in an instance where you were underlining on a

1 page and you felt that that portion of the testimony
2 was particularly important, would you have turned
3 down the page then?

4 MR. RILEY: Asked and answered.

5 MR. BIERSTEKER: I join in that.

6 A I tried to turn them down just to note where I've
7 done it. Some of them are going to be important.
8 Some of them are not going to be so important. It's
9 a mixed bag. That's done for me as opposed to being
10 done for anybody else. You understand?

11 Q Sure.

12 A It's easier than taking notes.

13 Q All right.

14 MR. HOLFORD: All right, Mr. Biersteker,
15 will you or your firm here take all those pages in
16 the depositions that have the corners turned down
17 and provide copies for the parties and also Dr.
18 Phelan. Do I incur what - six cents a page for
19 that?

20 MR. BIERSTEKER: Well, I don't know what
21 the charge is, but I will be happy to make copies of
22 these pages.

23 THE WITNESS: Sorry if I ---

24 MR. BIERSTEKER: That's all right. We
25 will be happy to make copies of this and distribute

1 them. Six cents - is that what we agreed on
2 previously?

3 MR. HOLFORD: That's been throughout the
4 case, yes.

5 MR. BIERSTEKER: That's fine. I will
6 charge you six cents a page for the copies.

7 I would suggest to the extent that we have
8 three depositions here, four transcripts - four
9 volumes but three depositions, I would suggest that
10 we make at least each deposition and possibly each
11 transcript a separate exhibit so that we don't have
12 all of them running together.

13 MR. HOLFORD: Why don't we call Bonnie
14 Volume 1 2-A, Bonnie Volume 2 2-B, Marcus Allgood
15 2-C and Sam Allgood's workmen's comp deposition 2-D.
16 Also we can include the title page of each of those
17 volumes.

18 MR. BIERSTEKER: I agree. That's fine.

19 THE WITNESS: May I get these back then?
20 It's, like, my notes.

21 MR. HOLFORD: Yes, ma'am.

22 THE WITNESS: Okay, thank you.

23 Q (By Mr. Holford) Now, Dr. Phelan, is it your
24 opinion based on your experience and training that
25 any smoker of cigarettes is responsible for their

1 own decision to smoke and that that smoker is able
2 to quit smoking any time they decide to do so? Is
3 that your opinion?

4 A I believe anyone can quit smoking if they make up
5 their minds to do that, yes, sir.

6 Q That's true of any smoker, in your opinion?

7 A Yes, sir, it is.

8 Q Also that any smoker was totally responsible for
9 their own decision to smoke?

10 A Certainly any adult smoker is responsible for their
11 decisions to smoke. As a child, you are subject to
12 peer pressures, and you're subject to wanting to be
13 grown up, and I can see all kinds of extenuating
14 circumstances for children smoking, but an adult
15 makes a conscious choice every time he lights up or
16 she lights up, and I think, by the same token, they
17 make a conscious choice to quit or continue smoking.

18 Q A child also lacks the judgment ability that an
19 adult has. Is that right?

20 A They have very different kinds of criteria for
21 judgment, yes, sir.

22 Q Now, so are you saying, Dr. Phelan, that a smoker
23 who doesn't quit but continues to smoke until they
24 die - that that person has only themselves to blame
25 for their death?

1 MR. BIERSTEKER: Object to the form of
2 the question.

3 A I'm not saying they are a blame for their death.
4 I'm saying they are responsible for continuing
5 risk-taking behavior, and that is, in the case of a
6 smoker, smoking.

7 In the case of something else, whether it's
8 taking - eating a lot of barbecue with the bark and
9 charcoal on it, which has also been reported to be a
10 risk-taking kind of behavior, they're responsible
11 for doing that.

12 Q But just about smokers - cigarette smokers I'm
13 saying, is it your opinion that when a cigarette
14 smoker dies and there's no apparent other cause than
15 a smoking-caused disease that they had that that
16 person did it to themselves?

17 A Well, I think we can't show that they died of a
18 disease, and it's a smoking-caused disease. I think
19 we can show that smoking may have contributed to
20 whatever that disease is, but I don't think we can
21 say definitively that this smoking caused your heart
22 attack.

23 I think we can say that certainly smoking
24 was a risk of certainly exacerbating any problems
25 you have with your heart. If you're smart, you'll

1 stop smoking. So, see, I'm - I hold people
2 responsible for making the right choices because I
3 think we are clearly given freedom of choice. So I
4 have to hold people responsible when they make very
5 bad choices unless they are of such low IQ they
6 can't really make a choice or unless they're so
7 mentally ill they cannot make a choice or brain
8 injured or any of those things.

9 Q Or they're a child?

10 A Or if they're a real little-bitty child, you bet.

11 Q How about a 13 year old?

12 A Well, see, I think I was responsible for deciding to
13 do that. Admittedly a lot of peer pressure, wanting
14 to be a grown-up, having parents who smoked - all
15 those things led to my wanting to smoke.

16 Q But a six, seven, eight year old - that's a small
17 child?

18 A That's a small child. A six, seven, eight year old
19 does the same things. They sometimes will choose to
20 do things because their peers do it, or their
21 parents do it, or they feel it makes them grown up.

22 Q So you do believe that, say, a seven or eight year
23 old, if they start smoking then, that they are, just
24 like an adult, responsible for their decision to
25 start smoking?

1 A I'm not saying that. What I'm saying is there are a
2 multitude of facets that make them want to smoke at
3 those ages. That's all I'm saying.

4 Q All right. Now, let's talk about laryngeal cancer,
5 cancer of the larynx. Is that caused by smoking?

6 A Certainly smoking is a risk factor.

7 Q Is smoking the primary risk factor for that?

8 A I don't know because I think that there are other
9 things that have been called a risk factor. For
10 example working in petrochemical industries are also
11 a risk factor for such illnesses.

12 Q Do you know what chemicals would be involved as a
13 risk factor for laryngeal cancer?

14 A I don't know all of them. No, I don't. I know
15 there are some that are simply because my husband
16 had been a chemist and had talked about some of
17 those things.

18 Q Anything you know about that you heard from your
19 husband?

20 A From, yes, my husband, of those particular
21 chemicals.

22 Q Do you recall any chemical that is - he said would
23 be a risk factor for laryngeal cancer?

24 A No, sir, I remember several chemicals that he felt
25 could certainly affect the lungs, the throat and all

1 those that he talked about.

2 Q But you don't remember what they are?

3 A Well, I remember one was something phosgene because
4 they were working on it in the laboratory. He had
5 gotten - something went wrong with the experiment,
6 and he got inundated with this, and he was very,
7 very ill, and we talked about it.

8 Q Did he say that was a cause of cancer in the
9 respiratory tract?

10 A He talked about it being a very powerful chemical
11 that could injure lungs.

12 Q It might eat them up, right, but did he say it was a
13 cause of cancer that you recall?

14 A I don't remember whether he did or not. That's, I
15 guess, 40 years ago.

16 Q Now, Dr. Phelan, to the extent that a smoker who
17 dies - that their death was contributed to by their
18 cigarette smoking, do you say that, as far as that
19 contribution, they did it to themselves?

20 A I don't think ---

21 MR. RILEY: Asked and answered.

22 A I don't think they intended to do that to
23 themselves. I do think that they did intend to
24 smoke, and they made that choice every day they lit
25 up a cigarette.

1 Q Well, let's - I mean, in -- do you think that
2 smokers today are fully aware of the risks of what
3 they're doing?

4 A Of course.

5 Q So a smoker today who is aware that their chances of
6 getting, let's say, lung cancer are elevated greatly
7 over nonsmokers?

8 A Yes, sir.

9 Q That's true, isn't it?

10 A That's my understanding, yes, sir.

11 Q And that -- and of course the smoker's chances of
12 getting laryngeal cancer are also elevated greatly
13 over a nonsmoker?

14 A That's my understanding.

15 Q And the smoker's chances of getting coronary heart
16 disease are elevated greatly over the chances of a
17 nonsmoker. Right?

18 MR. BIERSTEKER: Object to form.

19 A Those are one of the things that do that, yes, sir.

20 Q (By Mr. Holford) Certainly the chances of a smoker
21 getting emphysema are greatly increased over the
22 chances of a nonsmoker. Right?

23 A That's my understanding.

24 Q So if a smoker then with those elevated chances
25 certainly has one of them realized, that is, they

1 get lung cancer and die of it, how much of a
2 responsibility on that smoker do you get for their
3 death?

4 MR. BIERSTEKER: Object to the form of
5 the question.

6 A I smoked. I smoked for 20 years, two, three,
7 sometimes as much as four packs a day. I loved
8 smoking. If I get lung cancer -- and certainly my
9 behavior puts me at risk for that -- I have to blame
10 myself because I'm the one that chose to smoke. I'm
11 also the one that chose to not smoke. I have to
12 both take the credit for stopping as well as the
13 blame if I didn't stop soon enough.

14 Q And is that your opinion as to any smoker who dies?

15 A Absolutely.

16 Q All right, so now let's take a person who is such a
17 risk taker that they party ---

18 A Party hearty.

19 Q --- take a revolver and they put - say it's a six
20 shot and they put three bullets in it and leave
21 three chambers empty and they whirl the chamber and
22 they put it to their head and pull the trigger, is
23 that any different than what a smoker does, in your
24 opinion, when they continue to smoke?

25 A Very different.

1 Q How?

2 A It is very different for a number of reasons, but
3 one of the most is that you are taking an immediate
4 risk - you are doing an immediate risk factor.
5 You're going to pull a trigger, and you may die at
6 that moment.

7 With smoking, you make the decision to
8 smoke, and whatever payoff there is is way in the
9 future, and we don't tend to think it's going to
10 happen to us. So those are very different kind of
11 things.

12 They are both responsible for their
13 behavior. I'm going to hold the person who, unless
14 he's blind drunk who picks up a gun, spins the
15 chamber and pulls the trigger - I'm going to hold
16 him responsible for his death. I'm going to blame
17 the revolver, but it is a very different kind of
18 experience than one who smokes now with the idea
19 that they're now twenty or thirty, and they aren't
20 even thinking about reaching my age. That's so far
21 in the future that they don't believe it's going to
22 happen to them. It's the proximity of the action to
23 the consequences that really do determine how people
24 think.

25 Q Well, have you stated what you believe are all the

1 differences between what the person with the gun
2 does and what a smoker does?

3 A No, but that's one of the things. In fact that's
4 all I can think of right now. That's my big one.

5 Q Well, then let me put it this way, Dr. Phelan:
6 Let's talk about -- well, let me back up.

7 The diseases of, let's say, cancer - of lung
8 cancer, laryngeal cancer, bladder cancer, these
9 cancers that smoking is known to contribute to ---

10 MR. BIERSTEKER: Object to the form of
11 the question.

12 Q Is that right?

13 A Well, that's what I hear. Some people believe that
14 that is a factor. It's a risk factor.

15 Q You don't believe - I thought -- well, okay, you
16 don't believe that smoking contributes to lung
17 cancer, laryngeal cancer?

18 MR. BIERSTEKER: Object to the form of
19 the question in particular insofar as it calls for a
20 legal conclusion as to what a contributing cause is,
21 and the prior testimony was about increases your
22 chances of and things like that, that it was not
23 inconsistent. This is a somewhat different
24 question.

25 MR. RILEY: You are asking for her

1 personal opinion now, as I understand it?

2 MR. HOLFORD: I'm asking Dr. Phelan as
3 she sits here.

4 MR. RILEY: Her personal opinion or a
5 medical opinion?

6 MR. HOLFORD: I'm asking Dr. Caren
7 Phelan as she sits here. I'm not required to do
8 anything but ask the doctor questions.

9 MR. RILEY: Then I object to the form of
10 the question.

11 MR. HOLFORD: Okay.

12 A Let me go back to what the question was.

13 I believe that smoking is risk-taking
14 behavior and that it does play a part -- I don't
15 know great, large, small, but it definitely plays a
16 part in a number of different body illnesses, and I
17 don't know how much it plays, but for me it's not
18 worth the risk.

19 Q Is it your opinion that for any smoker it should not
20 be worth the risk?

21 MR. RILEY: Object to form of the
22 question.

23 A I'm going to leave that up to everybody to make
24 their own decision about that. I certainly make
25 that decision for me, but I'm not going to make it

1 for anybody else.

2 Q (By Mr. Holford) But you do, in your professional
3 viewpoint, blame a smoker who dies of a
4 smoking-related disease because they made their own
5 decision to continue smoking. That's what you
6 think?

7 A That's a value judgment. I do not make value
8 judgments. I don't blame people. I don't judge
9 people. I say this is the consequence. You are
10 responsible for taking and making your own choices.
11 I don't blame you. I'm not saying shame on you for
12 doing something. It's not a moral issue. It's a
13 risk-taking behavior that I will hold you
14 responsible for.

15 Q A smoker - in your opinion, a smoker who dies of a
16 smoking-related disease is responsible for their
17 death to the extent it was caused by their smoking?

18 A A person who is a smoker who continues smoking is
19 certainly the one who is responsible for continuing
20 the risk of getting something.

21 Q What do we in this -- let me back up. What do you
22 call the activity of a person who makes their own
23 decision to continue an activity which they know
24 their chances of dying from that activity are
25 greatly elevated over the people who don't do that

1 activity and they die from it - what do we call
2 that? What do you call that activity?

3 MR. RILEY: I object to the form of the
4 question.

5 MR. BIERSTEKER: Object to the form.

6 A Risk-taking behavior.

7 Q How does it differ from suicide?

8 A Suicides are - there are a number of ways it differs
9 from suicide, but there are also some similarities.
10 You make a conscious decision to jump off a bridge
11 and end your life, and the risk-taking behavior is
12 going over there to the bridge and jumping off of
13 it. You may or may not die. I certainly will hold
14 you responsible for that. I can be sorry. I can
15 feel it was a tragedy. I can grieve over it, but it
16 was your choice to go on that bridge and jump off
17 and kill yourself.

18 Q In the same way, you hold smokers responsible for
19 their own death. Right?

20 MR. RILEY: Object to the form of the
21 question.

22 MR. BIERSTEKER: Object to the form of
23 the question.

24 Q If they die from ---

25 MR. RILEY: It mischaracterizes the

1 testimony.

2 A I was going to say I hold them responsible for
3 choosing to continue to smoke. I don't hold people
4 responsible for their own death. The good Lord
5 takes us when he takes us, but I hold people
6 responsible for their behavior. If I drive down the
7 road at a hundred fifty miles an hour and a truck
8 crashes into me, I'm responsible for that, not the
9 truck.

10 Q But if a smoker, in your opinion, decides to
11 continue smoking and they do in fact die as a
12 result, you're holding them responsible for their
13 continuing to smoke includes their dying, doesn't
14 it?

15 A That's the consequence of their taking the
16 responsibility to continue smoking. There is -
17 there's a grave difference in my philosophy from the
18 way you're stating it. My philosophy says there are
19 consequences - natural consequences in this world
20 for every behavior we have and that we as
21 free-thinking individuals are responsible when we
22 take actions for those consequences, and that's just
23 the way it is.

24 Q Now, who else is responsible for that smoker's
25 death?

1 A The smoker is responsible for continuing risk-taking
2 behavior.

3 Q All right.

4 A And if he dies from smoking or if he's run over by a
5 truck, he dies.

6 Q We're talking about if he dies - when he dies from
7 smoking, all right, and you're saying that's his own
8 responsibility. Right?

9 A If he knows that there is a risk to continue to
10 smoke or eating chocolates because he's a diabetic -
11 if he knows or she knows there's a risk about that
12 and he's an adult that can make the decision or
13 she's an adult that can make a sane decision, then
14 they are responsible for having made that choice,
15 and whatever consequences come, come.

16 Q All right, and I believe you already said, though,
17 that an adult in this era, in your opinion, does
18 know these risks of smoking that we've discussed?

19 A Unless they don't speak English and don't read it.
20 In this country, I don't see how you could not know.

21 Q So the analogy between what, in your opinion, a
22 smoker who dies from the smoking he has done is not
23 much different than a person who jumps off a bridge
24 and dies?

25 MR. BIERSTEKER: Object to the form of

1 the question.

2 MR. RILEY: I object.

3 MR. BIERSTEKER: Also asked and
4 answered.

5 MR. RILEY: Mischaracterizes the
6 witness' testimony.

7 A I was going to say I thought I answered that one.

8 Q (By Mr. Holford) How different is it, if it's
9 different?

10 MR. RILEY: She's already explained
11 that.

12 A I think I've already explained it. I really do. I
13 think I answered that awhile back. Maybe I could
14 get the gentleman to read it back.

15 Q I think you answered that there were some
16 differences and some similarities, and I guess ---

17 A That was in some context of another question. I
18 don't remember which one it was now, but it was
19 another question. Certainly you do choose to go out
20 here and jump off a bridge.

21 Q You choose to smoke?

22 A You choose to smoke.

23 Q That's your opinion. Right?

24 A That is my opinion, yes, sir.

25 Q Any other similarities?

1 A I don't know. Right now that's - those are the two
2 that come to my mind since we're talking about
3 freedom of choice.

4 Q And the person that smokes in fact may or may not
5 die from that smoking. Right?

6 A I don't know.

7 Q Might get run over by a truck?

8 A That's right.

9 Q Okay, and the person who jumps off the bridge may
10 land by their feet and swim up to shore, or they may
11 break their neck and die. Right?

12 A That's true. That's all true.

13 Q So are not the two things quite similar?

14 MR. RILEY: Object to the form of the
15 question.

16 MR. BIERSTEKER: Object to the form.

17 MR. RILEY: Again, it mischaracterizes
18 the witness' testimony.

19 A It's the same philosophy around choosing. That's as
20 far as I would want to go. You have some freedom of
21 choice.

22 Q (By Mr. Holford) But I mean the two ---

23 A Unless you're spaced out on a hallucinogenic.

24 Q No, we're talking about a ---

25 A Then you have some kind of freedom of choice.

1 Q All right, and so tell me how - tell me now how it's
2 different, the smoker and the person who is on the
3 bridge.

4 MR. RILEY: Asked and answered.

5 A I'm not sure. I don't know. I'll give it some
6 thought.

7 Q I'm asking you to give it thought now.

8 A Well, probably take me longer than that.

9 Q Is it something you cannot figure out?

10 A No, I'm sure I can figure it out, but I am not going
11 to do it right now because it will take me some time
12 to think about it. I don't want to answer something
13 hastily that I need some time to think about.

14 Q That's the purpose of this deposition, Dr. Phelan,
15 for me to find out what you think. Okay?

16 A I understand that, and it's also my choice to be
17 taking more time to think carefully about my answers
18 before I give you erroneous ones that I have not
19 thought through.

20 Q I don't want an erroneous one or one you haven't
21 thought through.

22 A That's right.

23 Q Please think through it. It's only three minutes to
24 2. We've had lunch.

25 A I understand. I have no intentions of answering

1 that right now.

2 Q Why not?

3 A Because I said I wanted to take some time and think
4 about it.

5 Q Well, I'm asking you to answer it. I'll give you as
6 -- it's not me giving you. You're entitled to take
7 as much time as you would like to think about it.

8 A Thank you.

9 Q If you'd give me some idea of why it's difficult for
10 you, I might go on to another question, but right
11 now I don't see it.

12 A It's not something that I've thought of before, and
13 I need to spend some time thinking about it.

14 There are other issues I've talked about
15 today that I have thought about a great deal and
16 feel quite confident that I'm giving you my real
17 opinions and feelings about it, but this is one I
18 really hadn't thought of, and I would want more time
19 to think about it.

20 Q I don't really know what you mean by "more time." I
21 mean, if you need five minutes, ten minutes, 15
22 minutes, I think I could handle that within my
23 planned time frame.

24 A I want more time than that. Thank you.

25 Q Well, all right, let me try this - try -- you didn't

1 see my card, but I'm a mediator as well as a trial
2 lawyer.

3 A So am I. Oh, good.

4 Q I did see that on your CV.

5 A Yes, and I belong to the Texas mediation group.

6 Q Right. So we know that we try to resolve things
7 rather than stick on them. Right?

8 A Absolutely, not always possible, but we do try.

9 Q Well, yes, we know that also, don't we?

10 A Yes, sir, we sure do.

11 Q Not always. Now, we have this smoker, and I'm
12 talking about a 40, 50 year old smoker, not a
13 beginner. Okay?

14 A Okay, someone my age maybe or a little younger.

15 Q Even maybe - yeah. Okay, now, they've been smoking
16 all these 40 years or so, and they're smoking, well,
17 somewhere between a pack and a half to three packs a
18 day.

19 A Uh-huh. Excuse me. Yes, sir.

20 Q And, now, first of all, in your opinion, every smoke
21 that smoker takes is their own freewill decision.
22 Right?

23 A It's their choice.

24 Q And so they - that smoker continues and then at,
25 say, 57 or something, you know, 58 or something -- I

1 don't want to get to your age.

2 A Not that old. I understand.

3 Q That smoker gets laryngeal cancer and dies from it.

4 A Yes, sir.

5 Q Some big blood vessel bursts. Okay?

6 A Yes, sir.

7 Q Now, on the other hand, we have a - the twin
8 brother ---

9 A Okay, another 57 year old male.

10 Q --- who never smoked but has seen a lot of life and
11 maybe too much, and that person is on this bridge
12 going over a river, and for a long time they - the
13 person stands there and then decides to and does
14 jump.

15 A Yes, sir.

16 Q Now, if we look at the smoker just before he's
17 diagnosed with the laryngeal cancer and we look at
18 the person jumping off the bridge just as he clears
19 the guardrail ---

20 A Yes, sir.

21 Q --- regarding your theory of the free choice of
22 individuals ---

23 A Yes, sir.

24 Q --- are these two people acting any different?

25 A Well ---

1 MR. DAVID: I object to the form.

2 MR. BIERSTEKER: I object to the form of
3 the question before you answer it. Go ahead.

4 A I just thought of one major difference. I would
5 suspect - although it may not be true, but I would
6 suspect that the person on the bridge may also be
7 suffering from a major mental illness, i.e., major
8 depression.

9 Q Not in my hypo, Dr. Phelan.

10 A Well, in my hypothetical ---

11 MR. BIERSTEKER: In your hypothetical --
12 let me get this straight. In your hypothetical, a
13 perfectly sane, rational human being goes and stands
14 on the bridge and decides to jump off with no
15 depression or nothing else?

16 MR. HOLFORD: In my hypothetical, this
17 person does not have - this 57 year old person,
18 okay, with lots of family and financial problems is
19 not to the point of clinical depression yet, no.

20 A See, in mine, he would be because I've not seen a
21 suicide -- and I've unfortunately seen many in my
22 dealing with patients. I've not seen one who wasn't
23 either having a major depression recurrent or was
24 bipolar with a depressive disorder or was having a
25 major depression single episode. I mean, they're

1 always in some kind of terrible depression.

2 Q (By Mr. Holford) So do you then conclude that the
3 smoker who is approaching their sixties and knows --
4 and this is your opinion, right -- they know about
5 the risk of what they're doing, that they're always
6 in a single-episode depression or they're in a
7 depressive element of ---

8 MR. BIERSTEKER: I object to the form of
9 the question because it is so clearly contrary to
10 the prior testimony. The doctor identified
11 depression as a distinguishing characteristic
12 between jumping off a bridge and cigarette smoking.
13 Now you are asking her if it's the same.

14 MR. HOLFORD: I object to - at this
15 point in this deposition, I'm going to lay an
16 objection to these talking objections. Again, I
17 might do it once or twice in a deposition, and I get
18 an accolade of remarks and colloquy and so on. So
19 I'm going to take that privilege and raise that here
20 now.

21 Q (By Mr. Holford) Now, Dr. Phelan, then how do you
22 justify not saying that the cigarette smoker is in
23 some way depressed when you know that, in your
24 experience, the person about to jump off the - that
25 jumps off the bridge is?

1 A They're two different things. They're entirely two
2 different things.

3 Q How are they different?

4 A The person who smokes may also be depress - in the
5 throes of depression, but not - it's not necessarily
6 so. So those two things are not - one is not
7 dependent upon the other to occur. You could be a
8 smoker with a long-time habit of smoking and not be
9 depressed. You can also be depressed and also be a
10 long-time smoker.

11 Q Well, let's take the ---

12 A But a person who is about to commit suicide, in my
13 experience, has always been a depressed individual.

14 Q Yes, but let's take a smoker who is not depressed.

15 A Okay.

16 Q All right, this smoker who is 57 and has a 40-year
17 history and knows the risks that they're running -
18 how does your explanation that they are making a
19 freewill choice explain the fact that the person is
20 about to kill themselves?

21 A They don't think it's going to happen to them.
22 They're like all of us. It's going to happen to
23 somebody else. I'm not going to have the car wreck.
24 It's going to happen to somebody else.

25 Q What makes a smoker think that?

1 A You're asking what makes human beings feel that.
2 Human beings love to rationalize that they're not
3 going to have anything happen to them, that there
4 will always be a cure for everything.

5 In this country, we think that we are
6 invincible and that we won't die. We don't want to
7 think that all of us are going to end up out here
8 pushing up daisies. So we don't think about it.
9 It's what allows us to go through our days. It is
10 what allows us to live without fear of dying.

11 Q That's your experience of what - how adult smokers
12 think?

13 A That's my experience with how people think.

14 Q Including adult smokers?

15 A That includes everybody that I have dealt with.

16 Q Yes. Now, Dr. Phelan, what is it in a smoker that
17 makes them think that way?

18 A Because they love to smoke.

19 MR. RILEY: Asked and answered.

20 A They love to smoke.

21 Q That's it in your opinion. They just like the way
22 the hot embers go down their throat?

23 MR. BIERSTEKER: Objection to the form
24 of the question.

25 A I loved it. I loved smoking. I can smell a

1 cigarette today, and I still love smoking, but I'm
2 not going to risk getting anything by smoking.
3 Okay? It's risk-taking behavior, and I choose not
4 to participate, but smokers love to smoke. They
5 love the taste of it. They like the ability to feel
6 more relaxed, or they like whatever it is that it
7 does for them.

8 Q Do you know the risk to a 57 year old smoker of
9 dying in the next ten years?

10 A If you're 57, I suspect your chances of dying in the
11 next ten years are probably great. I hope it's
12 longer than nearer, but when you are 57, ten years
13 down the road makes you 67, and that's getting
14 older.

15 Q I asked you about a 57 year old smoker.

16 A Okay.

17 Q Does the fact that they're smoking at 57 make any
18 difference in their likelihood of dying in the next
19 ten years?

20 A I said I think it's a risk-taking behavior that's
21 not worth it. Yes, I'm sure it contributes
22 sometimes.

23 Q So in your opinion as you see cigarette smoking, you
24 don't conclude that a smoker who dies from smoking
25 is committing suicide?

1 A I don't make a value judgment about it at all. All
2 I say is that they should have quit if that's the
3 cause of death.

4 Q All right, have you heard or read the Center for
5 Disease Control's publication of smoking-caused
6 deaths in this country as being on the - over
7 400,000 a year?

8 MR. BIERSTEKER: Object to the form of
9 the question.

10 A I have read different, you know, things that have
11 been published by various companies. I don't know
12 if I read that or not.

13 Q Do you have any reason to disagree ---

14 A Of course not.

15 Q --- with the CDC's opinion - the CDC's published
16 figures on smoking-caused deaths?

17 MR. BIERSTEKER: Object to the form.

18 A I don't know anything about it. So -- how they
19 gathered it or anything else. So why should I
20 disagree?

21 Q (By Mr. Holford) Well, so then I have to put it to
22 you as an if. If over 400,000 Americans die each
23 year from smoking, is it your opinion then that each
24 and every one of them is responsible for their own
25 death?

1 MR. BIERSTEKER: Object to the form of
2 the question, also asked and answered.

3 A I believe everyone has the choice for themselves to
4 make. If they wish to continue with that
5 risk-taking behavior or if they wish to stop it, I
6 believe they have the ability as a thinking,
7 rational human being to make that choice, and I hold
8 them responsible for choices they make.

9 MR. HOLFORD: Let's mark this as Exhibit
10 3.

11 (Phelan Exhibit No. 3 marked for
12 identification.

13 (Discussion off the record.

14 Q (By Mr. Holford) Dr. Phelan, I show you what's been
15 marked as Exhibit 3. Do you recognize that?

16 A I've not seen this before.

17 Q Did you just read the second and third pages, the
18 little bits that are ---

19 A The little bits that pertain to me, yes, yes.

20 Q Have you - has that been reviewed with you?

21 A They asked me for my opinion. This is my opinion.

22 Q You say this is your opinion - what's printed in
23 Exhibit 3?

24 A Yes, sir, yes.

25 Q All right, so Jones-Day drafted that and sent it to

1 you, or maybe they didn't send it to you?

2 A I was going to say I don't remember seeing this. I
3 certainly told them this is my opinion.

4 Q When you say you didn't remember seeing this, you
5 mean the first page of Exhibit 3?

6 A Yes.

7 Q But the second and third pages of Exhibit 3 contain
8 your opinions?

9 A This is exactly what I - yes, exactly what I said.

10 Q Now, do the second and third pages here actually --
11 well, let me start over.

12 MR. HOLFORD: Let's mark this as Exhibit
13 4.

14 (Phelan Exhibit No. 4 marked for
15 identification.

16 Q (By Mr. Holford) I show you what's been marked
17 Exhibit 4. That's my markings on it, Dr. Phelan.
18 Can you tell what I've done?

19 A Yes, sir, it looks like you've apportioned off parts
20 of what I've said and made it 1, 2 and 3 points.

21 Q Right. Does it appear that I have kind of cut out
22 your three opinions that you had stated there?

23 A No, I think it's a neat way of putting it, probably
24 neater than I said it, yes.

25 Q Maybe "cut out" was the wrong term. Have I

1 delineated each of the three opinions that you
2 stated?

3 A Yes, sir, and I said I think you've done a better
4 job of doing it than I did.

5 Q And I numbered them 1, 2 and 3. Right?

6 A Yes, sir.

7 Q Now, does Exhibit 4 state all of the opinions that
8 you presently expect to state at the trial of this
9 case?

10 A I don't know that it does all, but certainly this
11 reflects what I felt about that - the issue of Mr.
12 Allgood and his smoking. I don't know that it's all
13 of the opinions because I may come up with some
14 more. I don't know.

15 Q Well, that's why I said presently.

16 A At this present moment, this is all I - this
17 captures the way I believe about Mr. Allgood and his
18 smoking habit. Whether or not I would come up with
19 additional opinions about things at the time of the
20 trial, which is a long way away, I'm not going to
21 say I won't. I may.

22 Q If you do, you'll tell them to Jones-Day?

23 A Absolutely, and they will tell you, I'm sure.

24 Q You understand that I may be entitled to come back
25 for further deposition if that happens?

1 A Yes, sir.

2 Q I like to come to Austin.

3 A I don't blame you. I love it.

4 Q Now, I've got a book here. I think we've gone over
5 this some.

6 A Yes, sir.

7 Q Let me just read it, though, and ask you. Do you
8 agree with this statement at Page 7 of the 1988
9 surgeon general's report, "Criteria for drug
10 dependence, primary criteria, highly controlled or
11 compulsive use, psychoactive effects,
12 drug-reinforced behavior. The primary criteria
13 listed above are sufficient to define drug
14 dependence"?

15 A I do not.

16 MR. RILEY: Let me get an objection on
17 the record here, Doctor, which is that this has
18 already been gone through exhaustively this morning.
19 This in fact is the book that Mr. Holford was
20 reading from this morning, and we're just rehashing
21 old ground. I object.

22 MR. BIERSTEKER: I also object to the
23 form.

24 A As I said, I don't think that's sufficient, no. I
25 thought I answered all the other stuff about it

1 earlier.

2 Q (By Mr. Holford) So you disagree with what I just
3 read?

4 A I don't agree with it. I don't disagree with what
5 you read. It's there. You read it. I am just
6 saying I don't agree with that. It's not enough for
7 me.

8 Q All right, are you meaning there you have some
9 additional criteria for defining drug dependence?

10 A Yes, sir.

11 MR. BIERSTEKER: Object to the form,
12 asked and answered.

13 Q (By Mr. Holford) What are those?

14 A I thought I went through it this morning. I think
15 I've already answered that.

16 Q So you've already identified in your testimony
17 before now in this deposition any additional
18 criteria that you feel are needed for defining drug
19 dependence. Is that right?

20 MR. RILEY: She's responded to your
21 questions, Doug.

22 A You know, I don't know at this point. I just know I
23 answered a lot about that clause you read or
24 definition you read this morning, and I thought I
25 answered everything about it.

1 Q Well, that's what I'm trying to determine. Have you
2 answered everything about it that you know?

3 A I don't know. I don't know. I don't remember
4 verbatim what I said. You want him to read it back
5 to me?

6 Q Well, but you believe you've answered my questions
7 up to now. Right?

8 A I answered all the questions you asked me regarding
9 it in the morning, yes, sir.

10 Q So if I asked you before about your criteria for
11 drug dependence, you've given the fullest answer you
12 have earlier today?

13 A I thought I did. I said, you know -- I address it
14 differently, yes, sir.

15 Q The answer to my question is yes?

16 A Yes, I think I did.

17 Q Now, let me ask you about this statement at Page 9
18 of the 1988 surgeon general's report. This is
19 titled, "Major Conclusions: 1) Cigarettes and other
20 forms of tobacco are addicting. 2) Nicotine is the
21 drug in tobacco that causes addiction. 3) The
22 pharmacologic and behavioral processes that
23 determine tobacco addiction are similar to those
24 that determine addiction to drugs such as heroin and
25 cocaine."

1 A Disagree strongly.

2 MR. BIERSTEKER: Object to the form.

3 Q With each part of it?

4 A I certainly disagree that it is the same as the
5 major drugs that you read.

6 Q You dis ---

7 A I disagree strongly.

8 Q You also disagree that nicotine is the drug in
9 tobacco that causes addiction. Right?

10 A I don't know whether that does or not. That's a
11 medical issue, as I tried to tell you this morning,
12 that I'm not prepared to respond to. I think you
13 best ask a doctor. I think the first statement you
14 made ---

15 Q "Cigarettes and other forms of tobacco are
16 addicting."

17 A I disagree with that. I disagree with the first and
18 the last vehemently.

19 Q As to the statement, "Nicotine is the drug in
20 tobacco that causes addiction," you don't have any
21 expertise to enable you to answer that. Is that
22 right?

23 A I don't ---

24 MR. RILEY: Let me just object to the
25 form.

1 MR. BIERSTEKER: Also we went through
2 the whole nicotine versus cigarette smoking thing
3 this morning as well.

4 A When you say just nicotine, I don't know if pure
5 nicotine has some kind of properties or not. I
6 think that's a medical or a biological - a
7 biochemist's field of expertise, and I'd rather they
8 answered that for you.

9 When you say do I believe that cigarettes
10 are addictive, the answer is no.

11 Q (By Mr. Holford) Well, okay. Now, I just need a
12 clear answer to this, Dr. Phelan.

13 A I thought I was giving it to you.

14 MR. BIERSTEKER: I thought that was
15 plenty plain.

16 Q This second statement here, "Nicotine is the drug in
17 tobacco that causes addiction," do you have
18 expertise to answer that?

19 MR. BIERSTEKER: Let me interpose an
20 objection on several grounds. I'm not trying to
21 give you a speaking objection. Number one is the
22 question itself assumes cigarettes or tobacco ---

23 MR. HOLFORD: This is a speaking
24 objection. Why don't you just state the objections?

25 MR. BIERSTEKER: Fine. Object to the

1 form of the question. It assumes facts not in
2 evidence, and it's been asked and answered.

3 MR. HOLFORD: Thank you.

4 MR. BIERSTEKER: You're welcome.

5 Q (By Mr. Holford) Do you remember my question, or do
6 you want me to say it again? He can just say, "Same
7 objections."

8 A You know, same objections, yeah.

9 MR. RILEY: Why don't we just read it
10 back.

11 MR. HOLFORD: Yeah, okay, as to the
12 statement nicotine.

13 MR. RILEY: Do it however you want.

14 MR. HOLFORD: All right, read it back.

15 (The last question was read by
16 the reporter.

17 A I said I don't think that cigarettes are addictive.
18 I don't buy that way of thinking. So I can't really
19 answer that question.

20 Now, if you're talking about pure nicotine,
21 again, I go back to that's a medical issue or a
22 biochemical issue, and they should answer - the
23 biochemists and physicians should answer those
24 questions because I really don't know about pure
25 nicotine. It may be, or it may not be, but I don't

1 believe that cigarettes are addictive.

2 Q (By Mr. Holford) Well, that was the first
3 statement. Right?

4 A That's right. So I don't buy the second statement.
5 If I don't believe they're addictive in the first
6 statement, I can't assume addiction in the second
7 statement.

8 Q Well, assume isn't what we're after, Dr. Phelan. I
9 believe you referred me to a physician on this
10 second point, didn't you?

11 A Well, that's why I was saying I didn't know -- well,
12 let me go back.

13 When you asked that second question, I
14 didn't know if you were talking about pure nicotine
15 as you find in a laboratory or if we were talking
16 about a lesser amount. I mean, I really didn't
17 know. If we're talking about pure nicotine in the
18 laboratory, you got to go to a physician or a
19 biochemist because I'm not an expert in that area.

20 If you're saying do I believe that the
21 nicotine in cigarettes makes them addictive, the
22 answer is no, sir, I don't.

23 Q Because of the amount of it?

24 A I don't believe it is for I don't know what reason,
25 whether it's amount or what, but I do not believe

1 they're addictive.

2 Q But as to nicotine itself and any effects it has,
3 you're not an expert. Right?

4 A To deal with it in the laboratory, you got to talk
5 to a biochemist. You got to talk to a physician.

6 Q Okay. Well, whether you're in a laboratory setting
7 or not, if you're talking just about nicotine and
8 its effects, you're not an expert in that?

9 MR. BIERSTEKER: Object to the form of
10 the question.

11 MR. RILEY: Object to the form of the
12 question.

13 MR. BIERSTEKER: All effects, medical
14 effects, central nervous system effects,
15 psychological effects?

16 MR. HOLFORD: Object to counsel
17 testifying.

18 MR. BIERSTEKER: I'm not testifying; I'm
19 objecting.

20 Q (By Mr. Holford) You are not a expert in that.
21 Right?

22 A I'm not saying or presenting myself as an expert in
23 terms of the chemistry of nicotine in the
24 laboratory. I am saying that I do not believe a
25 cigarette that contains nicotine is addictive.

1 Q Why do you insist on the laboratory setting?
2 Nicotine occurs - nicotine is part of a tobacco leaf
3 out in the field, isn't it?

4 A Has to be processed.

5 Q You've heard of nicotine toxicity in tobacco farm
6 workers, haven't you?

7 A Yes, but they smoke it. They do all kinds of things
8 in curing it. What I'm saying is that I do not
9 believe a cigarette that has nicotine in it is
10 addictive.

11 Q You said that plenty of times here today, Dr.
12 Phelan.

13 A And I believe it; I believe it.

14 Q And I understand that.

15 MR. BIERSTEKER: You're just asking the
16 same question plenty of times.

17 MR. HOLFORD: Well, I can't get an
18 answer to the question I'm asking here ---

19 MR. BIERSTEKER: I think you've gotten
20 the answer.

21 MR. HOLFORD: --- about nicotine.

22 MR. BIERSTEKER: That's because your
23 question is almost impossible. You just keep asking
24 about nicotine. You don't qualify it in any way.
25 That's why I was trying to help you, and when I

1 tried to help you ---

2 MR. HOLFORD: All right.

3 MR. BIERSTEKER: --- I got told I was
4 making a speaking objection.

5 Q (By Mr. Holford) Here is the statement here, Dr.
6 Phelan, that is in the surgeon general's report 1988
7 on nicotine addiction.

8 A Yes, sir.

9 Q It's on Page 9. I'm just going to read it again to
10 you. I just want to know do you agree with it or
11 not or you don't have expertise to say yea or nay?
12 Okay?

13 A Yes, sir.

14 Q "2) Nicotine is the drug in tobacco that causes
15 addiction."

16 MR. RILEY: Object, asked and answered.

17 A I have answered a dozen times. I don't know how
18 else to answer it. I honest to God don't.

19 Q Do you agree with that or not?

20 A It's not a yes or no answer for me. That's why I
21 tried to answer it so that I could be honestly
22 stating how I feel, and I don't know any other way
23 to put it. It's just not a yes or no answer to me.

24 Q Do you have expertise to answer it?

25 A I feel I have plenty of expertise to talk about

1 cigarettes and smoking, yes, sir.

2 Q Well, let's see. I don't think that statement
3 includes cigarettes, and I don't think that
4 statement by itself includes smoking.

5 MR. BIERSTEKER: Includes tobacco.

6 Q It says, "Nicotine is the drug in tobacco that
7 causes addiction."

8 MR. BIERSTEKER: Why don't you ---

9 MR. RILEY: Is that statement not
10 talking about cigarettes, Doug?

11 MR. HOLFORD: Oh, I think the whole book
12 is talking ---

13 MR. RILEY: You just said it didn't
14 refer to cigarettes.

15 MR. HOLFORD: Well, I'm not being
16 questioned here, Mr. Riley, but I'll tell you that
17 the word "cigarette" is not in that statement.

18 MR. BIERSTEKER: That we can agree on.

19 MR. HOLFORD: Isn't that what I said?

20 MR. RILEY: I agree with that, but is
21 that not referring to cigarettes?

22 Q (By Mr. Holford) Now, Dr. Phelan, what is your
23 difficulty -- you told me plainly you disagree with
24 the first paragraph. "Cigarettes and other forms of
25 tobacco are addicting."

1 A Let me just say I disagree with the whole thing.
2 That will ease it. I just ---

3 Q Including, "Nicotine is the drug in tobacco that
4 causes addiction." You disagree with that?

5 A I disagree with it being an addictive - that
6 cigarettes are addictive. So if we're talking about
7 the tobacco that goes into cigarettes, which is what
8 I understood we were talking about, I do not agree
9 that it's addictive. I do believe it's a very nasty
10 habit. I don't know anything else to say.

11 Q You disagree with all three statements that I read
12 from Page 9 of the 1988 surgeon general's report?

13 MR. BIERSTEKER: Objection.

14 MR. RILEY: Objection.

15 MR. BIERSTEKER: Doug?

16 MR. RILEY: I don't recall three
17 statements.

18 MR. HOLFORD: I'll just read them again
19 then.

20 Q "Cigarettes and other forms of tobacco are
21 addicting. Nicotine is the drug in tobacco that
22 causes addiction."

23 MR. RILEY: Okay, I'm sorry. You
24 refreshed my memory.

25 MR. HOLFORD: Okay.

1 Q (By Mr. Holford) Then about the "pharmacologic and
2 behavioral processes that determine tobacco
3 addiction are similar to those that determine
4 addiction to drugs such as heroin or cocaine."
5 You're testifying here today that you disagree with
6 each of those statements. Right?

7 MR. RILEY: Object. I think this is
8 approaching the point of being badgering and
9 abusive. You may answer.

10 A I just don't know how else to answer it. I tried to
11 really answer it as honestly as I could about how I
12 believe. I don't know any other way to do it. So
13 if that hasn't - if I haven't made myself
14 understood, I'm sorry, and I apologize, but I don't
15 know any other way to do it.

16 Q (By Mr. Holford) Well, I thought you made a
17 conclusion here that you disagree with all of these
18 statements?

19 A I have said I do not believe that cigarettes are
20 addicting, and if you're talking about the nicotine
21 that's in cigarettes as part of that whole thing --
22 and I understood it was all on cigarettes -- I had
23 to say I disagree with it.

24 Q The whole three statements. Right?

25 A That I disagree that cigarettes are addictive, that

1 they are similar to - that they are similar to
2 drugs. They're not anywhere near like drugs. Ask
3 anyone who treated heroin addicts or any other kind
4 of drug addicts. They're nothing like that.

5 Q And you also believe that nicotine - you disagree
6 that nicotine is what in tobacco that causes
7 addiction?

8 MR. BIERSTEKER: Objection.

9 A I don't believe cigarettes are addictive. I don't
10 know about the nicotine itself. I don't want to
11 answer that because I know it can be extracted from
12 tobacco in pure form, and it may or may not in pure
13 form be addictive. That's what I keep referring you
14 to a biochemist or to a physician to determine.

15 Q All right. Now, how do you characterize Sam
16 Allgood's smoking as I am about to summarize?

17 MR. RILEY: Object to the form of the
18 question.

19 Q The first cigarette at about six, by 17 smoking one
20 to two packs a week, then dropped out of high school
21 after the eleventh grade and joined the Navy, and so
22 by 19, which is 1949, he's smoking one and a half or
23 more packs a day, which he continues to smoke until
24 1987, that he would often wake up at night to smoke
25 and be wakened up and smoke, that he smoked the

1 first thing on awakening, that he bought cigarettes
2 ten cartons at a time, and he kept ten cartons in
3 his freezer, kept two packs in his lunch kit, two
4 packs in his truck glove compartment, packs in his
5 wife's purse when she was out with him and smoked
6 despite any warnings that he ever received.

7 MR. BIERSTEKER: I object to the form.

8 MR. RILEY: What's the question?

9 MR. BIERSTEKER: What's the question?

10 A What's your question?

11 Q (By Mr. Holford) How do you characterize Sam
12 Allgood's smoking?

13 MR. RILEY: Object to the form.

14 MR. BIERSTEKER: I still object. It
15 assumes there is a characterization. With respect
16 to what?

17 A I was going to say I don't know what ---

18 MR. BIERSTEKER: Is it a lot; is it not
19 a lot; did it go over a long time?

20 Q (By Mr. Holford) Any way you wish to, Dr. Phelan.

21 A Well, I would say, in some ways, he's kind of
22 typical of people of our genre. He's my compatriot.
23 He's, I believe, maybe a year younger than I am.
24 He's typical of kids of that age. I was smoking
25 more than he was when I was 15. You know, I was

1 already up to a pack, pack and a half a day by the
2 time I was 15. That's what we did in those days.
3 Everybody smoked. All the Hollywood stars smoked.
4 Our parents all smoked. Everybody smoked. It's
5 what made kids grown up. That's why we smoked, and,
6 hey, how many times at night I've had to get up and
7 go to the bathroom, and I'd light a cigarette on the
8 way. I loved those cigarettes in the middle of the
9 night. They taste wonderful. You just love them.

10 The first thing I did in the morning when my
11 feet hit the floor, I'd light up a cigarette.
12 That's what cigarette smokers did in those days. We
13 didn't smoke filters. We liked tobacco. We smoked
14 because our peers smoked. Our parents smoked. The
15 world smoked. Then as we learned they were
16 dangerous, those of us who had sense - we stopped.

17 Q Sam Allgood didn't have sense?

18 A Sam Allgood didn't use good sense.

19 Q Is that it?

20 A In my opinion, he did not use good common sense. He
21 rationalized. He denied. He also had that good old
22 American feeling it can't happen to me.

23 Q Tell me when you're through.

24 A I think that about sums it up.

25 Q Okay. All right, now, if you look at Exhibit 4 -

1 you have it there in front of you?

2 A Yes, sir.

3 Q Item No. 1 - have you told us everything today that
4 you have to say on that?

5 A I think so.

6 Q Item No. 2 - the same thing?

7 A I think so.

8 Q Now, Item No. 3 - is it your opinion -- you've read
9 Bonnie Allgood's deposition?

10 A Yes, sir.

11 Q All about when Sam stopped smoking. Right?

12 A Yes, yes.

13 Q Is it your opinion that Sam stopped smoking purely
14 as a matter of his own personal decision to do so?

15 A Sure.

16 Q Was there anything that you think entered into that
17 decision?

18 A Sure, finally he got the board between the eyes. He
19 found out he had cancer. My mother's first heart
20 attack she had a cigarette in her hand. She never
21 smoked again. Those are the boards between the eyes
22 when you finally realize it can happen to me, and
23 those are the things that make us stop doing our
24 self-destructive behaviors.

25 Q Did you see in any of the depositions you read

1 anything about Sam Allgood being fearful of cancer?

2 A Yes, I did.

3 Q What was that?

4 A Understood from his wife that he was very afraid of
5 cancer because there had been a great deal of it in
6 his family.

7 Q I think his father died of cancer. Right?

8 A That's my understanding. I thought there was one of
9 those uncles that had cancer.

10 Q Oh, well, those were his stepuncles.

11 A I'm sorry. Those were step, right. I was thinking
12 they were half brothers.

13 Q Well, they were very close. Right?

14 A Uh-huh. Hoot I was thinking of.

15 Q Hoot, yeah, because that's Hoot Gibson's name, isn't
16 it?

17 A You bet.

18 Q Are you recalling anyone other than Myron, the
19 father, in Sam's blood family that died of cancer?

20 A I was thinking the uncles had. I'm sorry. That's
21 what I was speaking of.

22 Q Do you remember about the - when the reports about
23 saccharin may be causing cancer came out?

24 A Uh-huh. (Yes)

25 Q And Sam wouldn't use saccharin then. Right?

1 A Uh-huh. (Yes)

2 Q Say yes or no.

3 A Yes. I'm sorry; I'm sorry. It's getting late in
4 the day. I apologize.

5 Q I know. We're all looking to leaving.

6 A I apologize.

7 Q Dr. Phelan, I think you already mentioned burnt
8 meat?

9 A Yes, sir.

10 Q Do you remember that Sam, when he heard about burnt
11 meat possibly causing cancer, he wouldn't eat the
12 burnt meat anymore?

13 A That is correct. I heard that from his wife - I
14 read it - that his wife said.

15 Q You know that Sam Allgood was always telling his
16 wife, "Well, Bonnie, I've been smoking so long, if
17 it was going to happen, it would have already
18 happened. Don't worry. It isn't going to happen to
19 me?" Right? Do you recall that?

20 MR. BIERSTEKER: I object to the form of
21 the question.

22 A I recall reading that, yes, a marvelous
23 rationalization.

24 Q (By Mr. Holford) So when Sam -- now, you are a
25 psychologist. Right?

1 A That is correct. I am not a psychiatrist.

2 Q Well, you know how sometimes hard messages can
3 affect people?

4 A Yes, sir.

5 Q So with this kind of history, when Sam Allgood was
6 told, "Allgood, looks like you've got cancer," you
7 expect he was in shock?

8 A Of course.

9 MR. HOLFORD: All right, I may not have
10 much more.

11 Q (By Mr. Holford) Have you ever heard of Dr. John
12 Grabowski?

13 A No, sir, I don't think I'm familiar with him except
14 I had heard his name last night as one of the people
15 that was testifying.

16 Q All right, was anything - do you recall anything
17 that was said to you about Dr. John Grabowski?

18 A They asked me if I knew Dr. Grabowski. I said no.
19 I know a lot of psychologists in Texas because I've
20 been floating around a long time and meet them at
21 conferences and et cetera, but then they said he was
22 not a clinician. So I probably wouldn't have run
23 into him.

24 Q Did they tell you that he was in the University of
25 Texas Department of Psychiatry?

1 A Yes, in Houston, yes.

2 Q That is Department of Psychiatry and Behavioral
3 Scientists?

4 A That's right.

5 Q I'm sorry, Sciences.

6 A Yeah.

7 Q Were any of the opinions of Dr. Grabowski in this
8 case discussed with you?

9 A I don't know. I don't know what his opinions were.

10 Q Were any opinions about nicotine addiction discussed
11 with you?

12 A No, sir, I don't know what his opinions were.

13 Q Well, I'm saying ---

14 A I haven't read anything. I don't know anything.

15 Q I don't know. Maybe they were attributed to him,
16 and maybe they weren't. I'm just saying were any
17 opinions about nicotine addiction discussed with
18 you?

19 A My opinions. That's what we discussed. I don't
20 know - I don't know anything about what Dr.
21 Grabowski has said. The only time it came up was
22 did I know him, had I met this psychologist, and I
23 had said no, I couldn't bring it to mind. I didn't
24 know him. I may have met him, but I don't remember
25 that, and I had asked, you know, kind of where he

1 worked and what he did to see if it jogged a memory.
2 When I realized he isn't a clinician, I - those are
3 the ones I know. He's not one. So I figured I
4 didn't know.

5 Q Well, it didn't take you long to state your opinions
6 about nicotine addiction, did it?

7 MR. RILEY: Object to the form of the
8 question.

9 A Take long?

10 Q Right. You just said there isn't any. Right?

11 A No, I didn't say that. I said I don't believe that
12 cigarettes are addictive, and, yes, I believe they
13 have nicotine in them. That's what I've said.

14 Q So in your opinion, nicotine can be addicting then?

15 A No.

16 MR. BIERSTEKER: Object to the form of
17 the question.

18 MR. RILEY: Object to the form.

19 MR. BIERSTEKER: It's been asked and
20 answered.

21 Q (By Mr. Holford) I thought you said that.

22 A No, sir.

23 Q That in the laboratory ---

24 A I said, in the laboratory, you need to go ask
25 somebody about that pure nicotine. I don't know.

1 Q Oh, I see, okay. You don't have an opinion on
2 whether nicotine by itself ---

3 A Pure in the laboratory is anything.

4 Q --- can be addicting or not?

5 A I don't know anything about it. All I am saying is
6 I don't believe cigarettes are addicting.

7 Q Now, did you learn yesterday that Dr. John Grabowski
8 was head of the University of Texas Health Science
9 Center's substance abuse research center?

10 A I understood ---

11 MR. BIERSTEKER: Object to form of the
12 question.

13 THE WITNESS: Excuse me.

14 MR. BIERSTEKER: That's all right. I'll
15 just object to the form of the question.

16 A I understood that he was a researcher in the area of
17 substance abuse. I don't know that I knew his exact
18 title is all I'm saying.

19 Q (By Mr. Holford) If Dr. John Grabowski doesn't
20 treat patients, is that of any significance in your
21 opinion as to his having opinions on - in the
22 substance abuse area?

23 MR. RILEY: Object to the form.

24 A He can have any opinions he wants on anything. I'm
25 not going to object to that at all. I think that if

1 you don't treat patients you miss a tremendous
2 amount. I have found that researchers don't always
3 know what really goes on with patients and that
4 where you learn about all this stuff is dealing with
5 people. There's no substitute for being out there
6 on the wards treating folks. There's just not.

7 There were things I learned at Saint
8 Elizabeth's that I couldn't possibly have learned
9 anywhere else treating patients.

10 Q On the other hand, in treating patients, you see
11 them only for the length of time that they're in
12 your office or you're in their hospital area as you
13 their psychologist and they the patient. Right?

14 A I used to run the programs. You know, I mean, I ran
15 a hundred fifty bed unit and 20 medical beds in San
16 Antonio. I ran the substance abuse program here at
17 Shoal Creek, started the adolescent substance abuse
18 program.

19 No, I have been around patients a long time.
20 I worked at Saint Elizabeth's when they were 6800
21 inpatients, a lot of whom, believe me, were
22 alcoholic. No, what I learned was dealing with
23 patients.

24 Q All right, and you've already described today the
25 extent you've dealt with people for tobacco issues.

1 Right?

2 A And among all of those patients, trust me, a large
3 percentage were tobacco smokers.

4 Q They may have been, but to the extent you treated
5 them for their tobacco usage, do you remember how
6 many that was?

7 A No, I think I told you ---

8 MR. RILEY: Asked and answered.

9 A --- I don't count patients. I don't know.

10 Q (By Mr. Holford) All right. Now -- so I'm looking
11 here, Dr. Phelan, at a March 1, 1993 opinion letter
12 and a November 8, 1993 opinion letter, and there's
13 also a declaration of John Grabowski in this case.
14 You've never seen any of those things?

15 A No, sir.

16 Q You never had the substance of them or anything from
17 them discussed with you that you know of?

18 A I have never seen those papers. I don't know what
19 he said in those. Okay? I don't have any idea.

20 Q You didn't ask to know what John Grabowski thinks?

21 A No, because they were interested in what I thought.
22 I'm not going to change my opinion just because
23 someone else has a different opinion.

24 Q When you mentioned that you had seen excerpts from
25 the surgeon general's reports and I included in my

1 question the '88 and '89 surgeon general's reports
2 and you said you had ---

3 A I have seen excerpts from them, yes.

4 Q Do you recall in seeing any excerpt from the 1988
5 surgeon general's report these major conclusions,
6 the three items that we went over?

7 A I may have. I don't recall. I've certainly seen
8 excerpts from all of the surgeon general's reports,
9 but I don't remember the specifics of the excerpts.

10 Q Well, the excerpts you believed were good summaries
11 of what was in the reports. Right?

12 A I thought they were.

13 MR. BIERSTEKER: Object to form.

14 A But I didn't read the report. So I really can't
15 make a definitive statement on that. To me I
16 thought they were.

17 Q Well, do you expect then that these major
18 conclusions from Page 9 of the surgeon general's
19 report, which are stated in the introduction to the
20 whole report - that those major conclusions of the
21 report would have been in the excerpt that you saw?

22 A I don't know.

23 MR. BIERSTEKER: Object to the form.

24 Q But I say do you expect that it would have?

25 A Could have been, certainly could have been. I don't

1 know.

2 Q So you don't recall having any reaction one way or
3 the other about the excerpt you read from the 1988
4 surgeon general's report. Right?

5 A The things that I have recalled were that they said
6 that cigarette smoking is a risk factor with cancer,
7 heart disease and a number of other diseases. I
8 already reached that conclusion myself a long time
9 ago.

10 Q What surgeon general's report are you saying said
11 that cigarette smoking was a risk factor?

12 A That's what I understood from -- I don't know which
13 ones. I've been reading them since whenever they
14 started. You said somewhere in the 1960s. I don't
15 remember the date but from wherever they started
16 that they posed a risk.

17 Q People mean different things by posing a risk. Are
18 you saying that there's no proof that cigarette
19 smoking causes lung cancer in this instance?

20 MR. BIERSTEKER: Object to the form of
21 the question.

22 A I think they pose a risk to the development of a
23 number of illnesses just like I think there are lots
24 of things out there posing a risk to the development
25 of cancers of all kinds.

1 Q (By Mr. Holford) Does cigarette smoking cause lung
2 cancer?

3 A I don't know. I think it poses a risk, a big enough
4 risk that I quit smoking.

5 Q Made your personal choice. Right?

6 A I made my personal choice. I hope it was in time.
7 If it wasn't, I have to live with it, don't I?

8 Q Well, you've never had any harms or diseases or
9 anything from your cigarette smoking, have you?

10 A I don't know. I've not looked for it.

11 Q Well, I know, but I mean, you've never been
12 diagnosed with any?

13 A No, sir.

14 Q Okay.

15 THE WITNESS: Let me just call.

16 MR. BIERSTEKER: Let's just take a short
17 break.

18 (Recess - two minutes

19 (Deposition concluded.
20
21
22

23 _____
(Signature of witness)

24 SUBSCRIBED AND SWORN to before me by P.

25 CAREN PHELAN, Ph.D. on this _____ day of

_____, 1994, to certify which, witness my
hand and seal of office.

Notary Public in and for
the state of Texas

My commission expires:

* * * * *

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MRS. SAMUEL E. ALLGOOD,	X	
INDIVIDUALLY AND AS	X	
INDEPENDENT EXECUTRIX OF	X	
THE ESTATE OF SAMUEL E.	X	
ALLGOOD, MARCUS ALLGOOD,	X	
AND MALCOLM ALGOOD	X	
	X	
VS.	X	C.A. NO. H-91-0158
	X	
R.J. REYNOLDS TOBACCO	X	
COMPANY, THE AMERICAN	X	
TOBACCO COMPANY, THE	X	
TOBACCO INSTITUTE, INC.,	X	
AND THE COUNCIL FOR TOBACCO	X	
RESEARCH-U.S.A., INC.	X	

CERTIFICATE TO THE ORAL DEPOSITION OF:

P. CAREN PHELAN, Ph.D.

I, Neal W. Husak, certified shorthand reporter, state of Texas, do hereby certify that there came before me on the 22nd day of March 1994 in the law offices of Jones, Day, Reavis & Pogue, 301 Congress Avenue, Suite 1200, Austin, Texas the deponent, P. Caren Phelan, who was then duly sworn.


I further certify that I am neither attorney or counsel for, nor related to or employed by, any of the parties to the action in which this deposition is taken and further that I am not a

relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

The deposition was thereafter reduced to computerized transcription under my direction, and the the deposition transcript was then made available to the said witness on March 30, 1994 to be read, subscribed and sworn to.

I further certify that the witness _____ did ✓ did not sign and return the deposition to me, that changes _____ were _____ were not made by the witness, that any changes which were made are attached hereto and that the original deposition has been delivered to counsel who asked the questions.

Dated this 29th day of March 1994.


Neal W. Husak
Certified Shorthand Reporter
State of Texas
(Certificate No. 2143)

My Certification Expires:
December 31, 1994.